



Rep. Ann Williams

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1 AMENDMENT TO SENATE BILL 1653

2 AMENDMENT NO. _____. Amend Senate Bill 1653 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This amendatory Act may be
5 referred to as the Illinois Renewable Electricity Resources
6 Act.

7 Section 5. The Illinois Power Agency Act is amended by
8 changing Sections 1-10, 1-20, 1-56, and 1-75 and by adding
9 Sections 1-76, 1-76.5, 1-77, 1-78, and 1-79 as follows:

10 (20 ILCS 3855/1-10)

11 Sec. 1-10. Definitions.

12 "Agency" means the Illinois Power Agency.

13 "Agency loan agreement" means any agreement pursuant to
14 which the Illinois Finance Authority agrees to loan the
15 proceeds of revenue bonds issued with respect to a project to

1 the Agency upon terms providing for loan repayment installments
2 at least sufficient to pay when due all principal of, interest
3 and premium, if any, on those revenue bonds, and providing for
4 maintenance, insurance, and other matters in respect of the
5 project.

6 "Authority" means the Illinois Finance Authority.

7 "Bundled renewable energy resources" means electricity
8 generated by a renewable energy resource and its associated
9 renewable energy credit.

10 "Clean coal electricity buyer" means (1) each electric
11 utility and (2) each alternative electric retail supplier that
12 is subject to the requirements of subsection (d) of Section
13 1-75 of this Act and paragraph (5) of subsection (d) of Section
14 16-115 of the Public Utilities Act.

15 "Clean coal energy" means all energy produced by the
16 initial clean coal facility.

17 "Clean coal facility" means an electric generating
18 facility that uses primarily coal as a feedstock and that
19 captures and sequesters carbon dioxide emissions at the
20 following levels: at least 50% of the total carbon dioxide
21 emissions that the facility would otherwise emit if, at the
22 time construction commences, the facility is scheduled to
23 commence operation before 2016, at least 70% of the total
24 carbon dioxide emissions that the facility would otherwise emit
25 if, at the time construction commences, the facility is
26 scheduled to commence operation during 2016 or 2017, and at

1 least 90% of the total carbon dioxide emissions that the
2 facility would otherwise emit if, at the time construction
3 commences, the facility is scheduled to commence operation
4 after 2017. The power block of the clean coal facility shall
5 not exceed allowable emission rates for sulfur dioxide,
6 nitrogen oxides, carbon monoxide, particulates and mercury for
7 a natural gas-fired combined-cycle facility the same size as
8 and in the same location as the clean coal facility at the time
9 the clean coal facility obtains an approved air permit. All
10 coal used by a clean coal facility shall have high volatile
11 bituminous rank and greater than 1.7 pounds of sulfur per
12 million btu content, unless the clean coal facility does not
13 use gasification technology and was operating as a conventional
14 coal-fired electric generating facility on June 1, 2009 (the
15 effective date of Public Act 95-1027).

16 "Clean coal fraction" means, with respect to a clean coal
17 electricity buyer for a month, a fraction, the numerator of
18 which is such clean coal electricity buyer's retail market
19 sales of electricity (expressed in kilowatthours sold) in the
20 State during the third month preceding the applicable month and
21 the denominator of which is the total retail market sales of
22 electricity (expressed in kilowatthours sold) in the State by
23 all clean coal electricity buyers during such third month
24 preceding the applicable month, as such fraction may be
25 adjusted pursuant to subparagraph (E) of paragraph (2) of
26 subsection (d) of Section 1-75 of this Act.

1 "Clean coal SNG facility" means a facility that uses a
2 gasification process to produce substitute natural gas, that
3 sequesters at least 90% of the total carbon dioxide emissions
4 that the facility would otherwise emit and that uses petroleum
5 coke or coal as a feedstock, with all such coal having a high
6 bituminous rank and greater than 1.7 pounds of sulfur per
7 million btu content.

8 "Commission" means the Illinois Commerce Commission.

9 "Costs incurred in connection with the development and
10 construction of a facility" means:

11 (1) the cost of acquisition of all real property and
12 improvements in connection therewith and equipment and
13 other property, rights, and easements acquired that are
14 deemed necessary for the operation and maintenance of the
15 facility;

16 (2) financing costs with respect to bonds, notes, and
17 other evidences of indebtedness of the Agency;

18 (3) all origination, commitment, utilization,
19 facility, placement, underwriting, syndication, credit
20 enhancement, and rating agency fees;

21 (4) engineering, design, procurement, consulting,
22 legal, accounting, title insurance, survey, appraisal,
23 escrow, trustee, collateral agency, interest rate hedging,
24 interest rate swap, capitalized interest and other
25 financing costs, and other expenses for professional
26 services; and

1 (5) the costs of plans, specifications, site study and
2 investigation, installation, surveys, other Agency costs
3 and estimates of costs, and other expenses necessary or
4 incidental to determining the feasibility of any project,
5 together with such other expenses as may be necessary or
6 incidental to the financing, insuring, acquisition, and
7 construction of a specific project and placing that project
8 in operation.

9 "Delivery services" has the same definition as found in
10 Section 16-102 of the Public Utilities Act.

11 "Delivery services non-eligible retail customers" means
12 the retail customers in an electric utility's service area for
13 which the electric utility provides delivery services, but
14 which are not eligible retail customers as defined in
15 subsection (a) of Section 1-75 of this Act.

16 "Department" means the Department of Commerce and Economic
17 Opportunity.

18 "Director" means the Director of the Illinois Power Agency.

19 "Demand-response" means measures that decrease peak
20 electricity demand or shift demand from peak to off-peak
21 periods.

22 "Distributed renewable energy generation device" means a
23 device that is:

24 (1) powered by wind, solar thermal energy,
25 photovoltaic cells and panels, biodiesel, crops and
26 untreated and unadulterated organic waste biomass, tree

1 waste, and hydropower that does not involve new
2 construction or significant expansion of hydropower dams;

3 (2) interconnected at the distribution system level of
4 either an electric utility as defined in this Section, an
5 alternative retail electric supplier as defined in Section
6 16-102 of the Public Utilities Act, a municipal utility as
7 defined in Section 3-105 of the Public Utilities Act, or a
8 rural electric cooperative as defined in Section 3-119 of
9 the Public Utilities Act; and

10 (3) located on the customer side of the customer's
11 electric meter and is generally used to offset that
12 customer's electricity load.

13 "Energy efficiency" means measures that reduce the amount
14 of electricity or natural gas required to achieve a given end
15 use.

16 "Electric utility" has the same definition as found in
17 Section 16-102 of the Public Utilities Act.

18 "Excluded renewable energy resources contract costs" means
19 the amount by which the costs of renewable energy resources,
20 purchased for a particular year to meet the renewable energy
21 resources standards of paragraph (1) of subsection (c) of
22 Section 1-75 of this Act applicable to the load of an electric
23 utility's eligible retail customers pursuant to a contract with
24 a term greater than one year that the electric utility entered
25 into in a previous year in accordance with a procurement
26 approved by the Commission pursuant to Section 16-111.5 of the

1 Public Utilities Act, exceed the limitations imposed by
2 paragraph (2) of subsection (c) of Section 1-75 of this Act for
3 the particular year.

4 "Facility" means an electric generating unit or a
5 co-generating unit that produces electricity along with
6 related equipment necessary to connect the facility to an
7 electric transmission or distribution system.

8 "Governmental aggregator" means one or more units of local
9 government that individually or collectively procure
10 electricity to serve residential retail electrical loads
11 located within its or their jurisdiction.

12 "Initial clean coal facility" means an electric generating
13 facility using gasification technology that: (1) has a
14 nameplate capacity of at least 500 MW; (2) irrevocably commits
15 in its proposed sourcing agreement to use coal for at least 50%
16 of the total feedstock over the term of a sourcing agreement,
17 with all coal having high volatile bituminous rank and greater
18 than 1.7 pounds of sulfur per million btu content; (3) is
19 designed to capture and sequester at least 90% of the carbon
20 dioxide emissions that the portion of the facility, if any,
21 that produces SNG would otherwise emit and at least 50% of the
22 total carbon dioxide emissions that the facility as a whole
23 would otherwise emit; (4) absent an appeal of a permit or
24 regulatory order, is reasonably capable of achieving
25 commercial operation by no later than 5 years after the
26 execution of the sourcing agreements; (5) has a feasible

1 financing plan; (6) has a reliable and cost-effective
2 transmission plan to deliver energy to Commonwealth Edison
3 Company and Ameren Illinois; and (7) has a power block designed
4 not to exceed allowable emission rates for sulfur dioxide,
5 nitrogen oxides, carbon monoxide, particulates, and mercury
6 for a natural gas-fired combined-cycle facility the same size
7 as and in the same location as the electric generating facility
8 at the time the electric generating facility obtains an
9 approved air permit.

10 "Large electric customer" means a customer that (1) obtains
11 retail electric service in the State from an electric utility
12 or an alternative retail electric supplier and (2) is not a
13 small electric customer.

14 "Local government" means a unit of local government as
15 defined in Article VII of Section 1 of the Illinois
16 Constitution.

17 "Municipality" means a city, village, or incorporated
18 town.

19 "Person" means any natural person, firm, partnership,
20 corporation, either domestic or foreign, company, association,
21 limited liability company, joint stock company, or association
22 and includes any trustee, receiver, assignee, or personal
23 representative thereof.

24 "Project" means the planning, bidding, and construction of
25 a facility.

26 "Public utility" has the same definition as found in

1 Section 3-105 of the Public Utilities Act.

2 "Real property" means any interest in land together with
3 all structures, fixtures, and improvements thereon, including
4 lands under water and riparian rights, any easements,
5 covenants, licenses, leases, rights-of-way, uses, and other
6 interests, together with any liens, judgments, mortgages, or
7 other claims or security interests related to real property.

8 "Renewable energy credit" means a tradable credit that
9 represents the environmental attributes of a certain amount of
10 energy produced from a renewable energy resource.

11 "Renewable energy resources" includes energy and its
12 associated renewable energy credit or renewable energy credits
13 from wind, solar thermal energy, photovoltaic cells and panels,
14 biodiesel, crops and untreated and unadulterated organic waste
15 biomass, tree waste, hydropower that does not involve new
16 construction or significant expansion of hydropower dams, and
17 other alternative sources of environmentally preferable
18 energy. For purposes of this Act, landfill gas produced in the
19 State is considered a renewable energy resource. "Renewable
20 energy resources" does not include the incineration or burning
21 of tires, garbage, general household, institutional, and
22 commercial waste, industrial lunchroom or office waste,
23 landscape waste other than tree waste, railroad crossties,
24 utility poles, or construction or demolition debris, other than
25 untreated and unadulterated waste wood.

26 "Revenue bond" means any bond, note, or other evidence of

1 indebtedness issued by the Authority, the principal and
2 interest of which is payable solely from revenues or income
3 derived from any project or activity of the Agency.

4 "Sequester" means permanent storage of carbon dioxide by
5 injecting it into a saline aquifer, a depleted gas reservoir,
6 or an oil reservoir, directly or through an enhanced oil
7 recovery process that may involve intermediate storage in a
8 salt dome.

9 "Servicing agreement" means (i) in the case of an electric
10 utility, an agreement between the owner of a clean coal
11 facility and such electric utility, which agreement shall have
12 terms and conditions meeting the requirements of paragraph (3)
13 of subsection (d) of Section 1-75, and (ii) in the case of an
14 alternative retail electric supplier, an agreement between the
15 owner of a clean coal facility and such alternative retail
16 electric supplier, which agreement shall have terms and
17 conditions meeting the requirements of Section 16-115(d) (5) of
18 the Public Utilities Act.

19 "Small electric customer" means a residential retail
20 electric customer that obtains electric service in the State
21 from an electric utility or an alternative retail electric
22 supplier.

23 "Substitute natural gas" or "SNG" means a gas manufactured
24 by gasification of hydrocarbon feedstock, which is
25 substantially interchangeable in use and distribution with
26 conventional natural gas.

1 "Total resource cost test" or "TRC test" means a standard
2 that is met if, for an investment in energy efficiency or
3 demand-response measures, the benefit-cost ratio is greater
4 than one. The benefit-cost ratio is the ratio of the net
5 present value of the total benefits of the program to the net
6 present value of the total costs as calculated over the
7 lifetime of the measures. A total resource cost test compares
8 the sum of avoided electric utility costs, representing the
9 benefits that accrue to the system and the participant in the
10 delivery of those efficiency measures, as well as other
11 quantifiable societal benefits, including avoided natural gas
12 utility costs, to the sum of all incremental costs of end-use
13 measures that are implemented due to the program (including
14 both utility and participant contributions), plus costs to
15 administer, deliver, and evaluate each demand-side program, to
16 quantify the net savings obtained by substituting the
17 demand-side program for supply resources. In calculating
18 avoided costs of power and energy that an electric utility
19 would otherwise have had to acquire, reasonable estimates shall
20 be included of financial costs likely to be imposed by future
21 regulations and legislation on emissions of greenhouse gases.

22 (Source: P.A. 95-481, eff. 8-28-07; 95-913, eff. 1-1-09;
23 95-1027, eff. 6-1-09; 96-33, eff. 7-10-09; 96-159, eff.
24 8-10-09; 96-784, eff. 8-28-09; 96-1000, eff. 7-2-10.)

1 Sec. 1-20. General powers of the Agency.

2 (a) The Agency is authorized to do each of the following:

3 (1) Develop electricity procurement plans to ensure
4 adequate, reliable, affordable, efficient, and
5 environmentally sustainable electric service at the lowest
6 total cost over time, taking into account any benefits of
7 price stability, for electric utilities that on December
8 31, 2005 provided electric service to at least 100,000
9 customers in Illinois. The procurement plans shall be
10 updated on an annual basis and shall include electricity
11 generated from renewable resources sufficient to achieve
12 the standards specified in this Act. For periods beginning
13 on and after June 1, 2012, the procurement plans shall also
14 include procurement of renewable energy credits, in
15 accordance with subsection (c) of Section 1-75 of this Act,
16 in amounts projected to be sufficient to meet the renewable
17 energy resources standard specified in subsection (c) of
18 Section 1-75 of this Act with respect to the kilowatthour
19 usage of delivery services non-eligible retail customers
20 in such electric utilities' service areas.

21 (2) Conduct competitive procurement processes to
22 procure the supply resources identified in the procurement
23 plan, pursuant to Section 16-111.5 of the Public Utilities
24 Act.

25 (3) Develop electric generation and co-generation
26 facilities that use indigenous coal or renewable

1 resources, or both, financed with bonds issued by the
2 Illinois Finance Authority.

3 (4) Supply electricity from the Agency's facilities at
4 cost to one or more of the following: municipal electric
5 systems, governmental aggregators, or rural electric
6 cooperatives in Illinois.

7 (b) Except as otherwise limited by this Act, the Agency has
8 all of the powers necessary or convenient to carry out the
9 purposes and provisions of this Act, including without
10 limitation, each of the following:

11 (1) To have a corporate seal, and to alter that seal at
12 pleasure, and to use it by causing it or a facsimile to be
13 affixed or impressed or reproduced in any other manner.

14 (2) To use the services of the Illinois Finance
15 Authority necessary to carry out the Agency's purposes.

16 (3) To negotiate and enter into loan agreements and
17 other agreements with the Illinois Finance Authority.

18 (4) To obtain and employ personnel and hire consultants
19 that are necessary to fulfill the Agency's purposes, and to
20 make expenditures for that purpose within the
21 appropriations for that purpose.

22 (5) To purchase, receive, take by grant, gift, devise,
23 bequest, or otherwise, lease, or otherwise acquire, own,
24 hold, improve, employ, use, and otherwise deal in and with,
25 real or personal property whether tangible or intangible,
26 or any interest therein, within the State.

1 (6) To acquire real or personal property, whether
2 tangible or intangible, including without limitation
3 property rights, interests in property, franchises,
4 obligations, contracts, and debt and equity securities,
5 and to do so by the exercise of the power of eminent domain
6 in accordance with Section 1-21; except that any real
7 property acquired by the exercise of the power of eminent
8 domain must be located within the State.

9 (7) To sell, convey, lease, exchange, transfer,
10 abandon, or otherwise dispose of, or mortgage, pledge, or
11 create a security interest in, any of its assets,
12 properties, or any interest therein, wherever situated.

13 (8) To purchase, take, receive, subscribe for, or
14 otherwise acquire, hold, make a tender offer for, vote,
15 employ, sell, lend, lease, exchange, transfer, or
16 otherwise dispose of, mortgage, pledge, or grant a security
17 interest in, use, and otherwise deal in and with, bonds and
18 other obligations, shares, or other securities (or
19 interests therein) issued by others, whether engaged in a
20 similar or different business or activity.

21 (9) To make and execute agreements, contracts, and
22 other instruments necessary or convenient in the exercise
23 of the powers and functions of the Agency under this Act,
24 including contracts with any person, local government,
25 State agency, or other entity; and all State agencies and
26 all local governments are authorized to enter into and do

1 all things necessary to perform any such agreement,
2 contract, or other instrument with the Agency. No such
3 agreement, contract, or other instrument shall exceed 40
4 years.

5 (10) To lend money, invest and reinvest its funds in
6 accordance with the Public Funds Investment Act, and take
7 and hold real and personal property as security for the
8 payment of funds loaned or invested.

9 (11) To borrow money at such rate or rates of interest
10 as the Agency may determine, issue its notes, bonds, or
11 other obligations to evidence that indebtedness, and
12 secure any of its obligations by mortgage or pledge of its
13 real or personal property, machinery, equipment,
14 structures, fixtures, inventories, revenues, grants, and
15 other funds as provided or any interest therein, wherever
16 situated.

17 (12) To enter into agreements with the Illinois Finance
18 Authority to issue bonds whether or not the income
19 therefrom is exempt from federal taxation.

20 (13) To procure insurance against any loss in
21 connection with its properties or operations in such amount
22 or amounts and from such insurers, including the federal
23 government, as it may deem necessary or desirable, and to
24 pay any premiums therefor.

25 (14) To negotiate and enter into agreements with
26 trustees or receivers appointed by United States

1 bankruptcy courts or federal district courts or in other
2 proceedings involving adjustment of debts and authorize
3 proceedings involving adjustment of debts and authorize
4 legal counsel for the Agency to appear in any such
5 proceedings.

6 (15) To file a petition under Chapter 9 of Title 11 of
7 the United States Bankruptcy Code or take other similar
8 action for the adjustment of its debts.

9 (16) To enter into management agreements for the
10 operation of any of the property or facilities owned by the
11 Agency.

12 (17) To enter into an agreement to transfer and to
13 transfer any land, facilities, fixtures, or equipment of
14 the Agency to one or more municipal electric systems,
15 governmental aggregators, or rural electric agencies or
16 cooperatives, for such consideration and upon such terms as
17 the Agency may determine to be in the best interest of the
18 citizens of Illinois.

19 (18) To enter upon any lands and within any building
20 whenever in its judgment it may be necessary for the
21 purpose of making surveys and examinations to accomplish
22 any purpose authorized by this Act.

23 (19) To maintain an office or offices at such place or
24 places in the State as it may determine.

25 (20) To request information, and to make any inquiry,
26 investigation, survey, or study that the Agency may deem

1 necessary to enable it effectively to carry out the
2 provisions of this Act.

3 (21) To accept and expend appropriations.

4 (22) To engage in any activity or operation that is
5 incidental to and in furtherance of efficient operation to
6 accomplish the Agency's purposes.

7 (23) To adopt, revise, amend, and repeal rules with
8 respect to its operations, properties, and facilities as
9 may be necessary or convenient to carry out the purposes of
10 this Act, subject to the provisions of the Illinois
11 Administrative Procedure Act and Sections 1-22 and 1-35 of
12 this Act.

13 (24) To establish and collect charges and fees as
14 described in this Act.

15 (25) To conduct competitive gasification feedstock
16 procurement processes to procure the feedstocks for the
17 initial clean coal facility in accordance with the
18 requirements of Section 1-78 of this Act. ~~To manage~~
19 ~~procurement of substitute natural gas from a facility that~~
20 ~~meets the criteria specified in subsection (a) of Section~~
21 ~~1-58 of this Act, on terms and conditions that may be~~
22 ~~approved by the Agency pursuant to subsection (d) of~~
23 ~~Section 1-58 of this Act, to support the operations of~~
24 ~~State agencies and local governments that agree to such~~
25 ~~terms and conditions. This procurement process is not~~
26 ~~subject to the Procurement Code.~~

1 (26) To review, revise, and approve sourcing
2 agreements and mediate and resolve disputes between
3 electric utilities or alternative retail electric
4 suppliers and the initial clean coal facility pursuant to
5 paragraph (4) of subsection (d) of Section 1-75 of this
6 Act.

7 (Source: P.A. 95-481, eff. 8-28-07; 96-784, eff. 8-28-09;
8 96-1000, eff. 7-2-10.)

9 (20 ILCS 3855/1-56)

10 Sec. 1-56. Illinois Power Agency Renewable Energy
11 Resources Fund.

12 (a) The Illinois Power Agency Renewable Energy Resources
13 Fund is created as a special fund in the State treasury.

14 (b) The Illinois Power Agency Renewable Energy Resources
15 Fund shall be administered by the Agency to procure renewable
16 energy resources. ~~Prior to June 1, 2011, resources procured~~
17 ~~pursuant to this Section shall be procured from facilities~~
18 ~~located in Illinois, provided the resources are available from~~
19 ~~those facilities. If resources are not available in Illinois,~~
20 ~~then they shall be procured in states that adjoin Illinois. If~~
21 resources are not available in Illinois or in states that
22 adjoin Illinois, then they may be purchased elsewhere.
23 Beginning June 1, 2011, resources procured pursuant to this
24 Section shall be procured from facilities located in Illinois
25 or states that adjoin Illinois. If resources are not available

1 in Illinois or in states that adjoin Illinois, then they may be
2 procured elsewhere. To the extent available, at least 75% of
3 these renewable energy resources shall come from wind
4 generation. Of the renewable energy resources procured
5 pursuant to this Section at least the following specified
6 percentages shall come from photovoltaics on the following
7 schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by
8 June 1, 2014; and 6% by June 1, 2015 and thereafter. Of the
9 renewable energy resources procured pursuant to this Section at
10 least the following percentages shall come from distributed
11 renewable energy generation devices: 0.5% by June 1, 2013,
12 0.75% by June 1, 2014, and 1% by June 1, 2015 and thereafter.
13 To the extent available, half of the renewable energy resources
14 procured from distributed renewable energy generation shall
15 come from devices of less than 25 kilowatts in nameplate
16 capacity. Renewable energy resources procured from distributed
17 generation devices may also count towards the required
18 percentages for wind and solar photovoltaics. Procurement of
19 renewable energy resources from distributed renewable energy
20 generation devices shall be done on an annual basis through
21 multi-year contracts of no less than 5 years.

22 The Agency shall create credit requirements for suppliers
23 of distributed renewable energy. In order to minimize the
24 administrative burden on contracting entities, the Agency
25 shall solicit the use of third-party organizations to aggregate
26 distributed renewable energy into groups of no less than one

1 megawatt in installed capacity. These third-party
2 organizations shall administer contracts with individual
3 distributed renewable energy generation device owners. An
4 individual distributed renewable energy generation device
5 owner shall have the ability to measure the output of his or
6 her distributed renewable energy generation device.

7 (c) The Agency shall procure renewable energy resources at
8 least once each year in conjunction with a procurement event
9 for electric utilities required to comply with Section 1-75 of
10 the Act and shall, whenever possible, enter into long-term
11 contracts on an annual basis for a portion of the incremental
12 requirement for the given procurement year. For periods
13 beginning on and after June 1, 2012, the Agency shall use the
14 Illinois Power Agency Renewable Energy Resources Fund, until
15 depleted, to procure renewable energy credits for the purposes
16 specified in paragraphs (2) and (6) of subsection (c) of
17 Section 1-75 of this Act. For each procurement of renewable
18 energy credits pursuant to this Section for periods beginning
19 on and after June 1, 2012, the Agency shall designate an
20 electric utility service area to which the procurement
21 pertains.

22 (d) The price paid to procure renewable energy credits
23 using monies from the Illinois Power Agency Renewable Energy
24 Resources Fund shall not exceed the winning bid prices paid for
25 like resources procured for electric utilities required to
26 comply with Section 1-75 of this Act.

1 (e) All renewable energy credits procured using monies from
2 the Illinois Power Agency Renewable Energy Resources Fund shall
3 be permanently retired.

4 (f) The procurement process described in this Section is
5 exempt from the requirements of the Illinois Procurement Code,
6 pursuant to Section 20-10 of that Code.

7 (g) All disbursements from the Illinois Power Agency
8 Renewable Energy Resources Fund shall be made only upon
9 warrants of the Comptroller drawn upon the Treasurer as
10 custodian of the Fund upon vouchers signed by the Director or
11 by the person or persons designated by the Director for that
12 purpose. The Comptroller is authorized to draw the warrant upon
13 vouchers so signed. The Treasurer shall accept all warrants so
14 signed and shall be released from liability for all payments
15 made on those warrants.

16 (h) The Illinois Power Agency Renewable Energy Resources
17 Fund shall not be subject to sweeps, administrative charges, or
18 chargebacks, including, but not limited to, those authorized
19 under Section 8h of the State Finance Act, that would in any
20 way result in the transfer of any funds from this Fund to any
21 other fund of this State or in having any such funds utilized
22 for any purpose other than the express purposes set forth in
23 this Section.

24 (i) The Illinois Power Agency Renewable Energy Resources
25 Fund shall be terminated upon depletion of all funds therein
26 through the purchase of renewable energy credits.

1 (Source: P.A. 96-159, eff. 8-10-09; 96-1000, eff. 7-2-10;
2 96-1437, eff. 8-17-10.)

3 (20 ILCS 3855/1-75)

4 Sec. 1-75. Planning and Procurement Bureau. The Planning
5 and Procurement Bureau has the following duties and
6 responsibilities:

7 (a) The Planning and Procurement Bureau shall each year,
8 beginning in 2008, develop procurement plans and conduct
9 competitive procurement processes in accordance with the
10 requirements of Section 16-111.5 of the Public Utilities Act
11 for the eligible retail customers of electric utilities that on
12 December 31, 2005 provided electric service to at least 100,000
13 customers in Illinois, and for years beginning on and after
14 June 1, 2012, for the procurement of renewable energy credits
15 in respect of the kilowatthour usage of delivery services
16 non-eligible retail customers in such electric utilities'
17 service areas. For the purposes of this Section, the term
18 "eligible retail customers" has the same definition as found in
19 Section 16-111.5(a) of the Public Utilities Act.

20 (1) The Agency shall each year, beginning in 2008, as
21 needed, issue a request for qualifications for experts or
22 expert consulting firms to develop the procurement plans in
23 accordance with Section 16-111.5 of the Public Utilities
24 Act. In order to qualify an expert or expert consulting
25 firm must have:

1 (A) direct previous experience assembling
2 large-scale power supply plans or portfolios for
3 end-use customers;

4 (B) an advanced degree in economics, mathematics,
5 engineering, risk management, or a related area of
6 study;

7 (C) 10 years of experience in the electricity
8 sector, including managing supply risk;

9 (D) expertise in wholesale electricity market
10 rules, including those established by the Federal
11 Energy Regulatory Commission and regional transmission
12 organizations;

13 (E) expertise in credit protocols and familiarity
14 with contract protocols;

15 (F) adequate resources to perform and fulfill the
16 required functions and responsibilities; and

17 (G) the absence of a conflict of interest and
18 inappropriate bias for or against potential bidders or
19 the affected electric utilities.

20 (2) The Agency shall each year, as needed, issue a
21 request for qualifications for a procurement administrator
22 to conduct the competitive procurement processes in
23 accordance with Section 16-111.5 of the Public Utilities
24 Act. In order to qualify an expert or expert consulting
25 firm must have:

26 (A) direct previous experience administering a

1 large-scale competitive procurement process;

2 (B) an advanced degree in economics, mathematics,
3 engineering, or a related area of study;

4 (C) 10 years of experience in the electricity
5 sector, including risk management experience;

6 (D) expertise in wholesale electricity market
7 rules, including those established by the Federal
8 Energy Regulatory Commission and regional transmission
9 organizations;

10 (E) expertise in credit and contract protocols;

11 (F) adequate resources to perform and fulfill the
12 required functions and responsibilities; and

13 (G) the absence of a conflict of interest and
14 inappropriate bias for or against potential bidders or
15 the affected electric utilities.

16 (3) The Agency shall provide affected utilities and
17 other interested parties with the lists of qualified
18 experts or expert consulting firms identified through the
19 request for qualifications processes that are under
20 consideration to develop the procurement plans and to serve
21 as the procurement administrator. The Agency shall also
22 provide each qualified expert's or expert consulting
23 firm's response to the request for qualifications. All
24 information provided under this subparagraph shall also be
25 provided to the Commission. The Agency may provide by rule
26 for fees associated with supplying the information to

1 utilities and other interested parties. These parties
2 shall, within 5 business days, notify the Agency in writing
3 if they object to any experts or expert consulting firms on
4 the lists. Objections shall be based on:

5 (A) failure to satisfy qualification criteria;

6 (B) identification of a conflict of interest; or

7 (C) evidence of inappropriate bias for or against
8 potential bidders or the affected utilities.

9 The Agency shall remove experts or expert consulting
10 firms from the lists within 10 days if there is a
11 reasonable basis for an objection and provide the updated
12 lists to the affected utilities and other interested
13 parties. If the Agency fails to remove an expert or expert
14 consulting firm from a list, an objecting party may seek
15 review by the Commission within 5 days thereafter by filing
16 a petition, and the Commission shall render a ruling on the
17 petition within 10 days. There is no right of appeal of the
18 Commission's ruling.

19 (4) The Agency shall issue requests for proposals to
20 the qualified experts or expert consulting firms to develop
21 a procurement plan for the affected utilities and to serve
22 as procurement administrator.

23 (5) The Agency shall select an expert or expert
24 consulting firm to develop procurement plans based on the
25 proposals submitted and shall award one-year contracts to
26 those selected with an option for the Agency for a one-year

1 renewal.

2 (6) The Agency shall select an expert or expert
3 consulting firm, with approval of the Commission, to serve
4 as procurement administrator based on the proposals
5 submitted. If the Commission rejects, within 5 days, the
6 Agency's selection, the Agency shall submit another
7 recommendation within 3 days based on the proposals
8 submitted. The Agency shall award a one-year contract to
9 the expert or expert consulting firm so selected with
10 Commission approval with an option for the Agency for a
11 one-year renewal.

12 (a-5) The Planning and Procurement Bureau shall at least
13 every 5 years beginning in 2012 develop feedstock procurement
14 plans and conduct competitive feedstock procurement processes
15 in accordance with the requirements of Section 1-78 of this
16 Act.

17 (1) The Agency shall, at least once every 5 years
18 beginning in 2012, issue a request for qualifications for
19 experts or expert consulting firms to develop the feedstock
20 procurement plans in accordance with Section 1-78 of this
21 Act. In order to qualify, an expert or, in the case of an
22 expert consulting firm, the individual who shall be
23 directly responsible for the work, must have:

24 (A) direct previous experience assembling large
25 scale feedstock supply plans or portfolios involving
26 coal and natural gas for industrial customers;

1 (B) an advanced degree in economics, mathematics,
2 engineering, risk management, or a related area of
3 study;

4 (C) ten years of experience in the energy sector,
5 including coal and gas procurement and managing fuel
6 supply risk;

7 (D) expertise in the feedstock markets, which may
8 be particularized to the specific type of feedstock to
9 be purchased in that procurement event;

10 (E) expertise in credit protocols and familiarity
11 with contract protocols;

12 (F) adequate resources to perform and fulfill the
13 required functions and responsibilities; and

14 (G) the absence of a conflict of interest and
15 inappropriate bias or against potential bidders or the
16 initial clean coal facility.

17 (2) The Agency shall at least every 5 years beginning
18 in 2012, as needed, issue a request for qualifications for
19 a feedstock procurement administrator to conduct the
20 competitive feedstock procurement processes in accordance
21 with Section 1-78 of this Act. In order to qualify, an
22 expert or, in the case of an expert consulting firm, the
23 individual who shall be directly responsible for the work,
24 must have:

25 (A) direct previous experience administering a
26 large scale competitive feedstock procurement process

1 involving coal and natural gas;

2 (B) an advanced degree in economics, mathematics,
3 engineering, or a related area of study;

4 (C) ten years of experience in the energy sector,
5 including coal and gas procurement and managing fuel
6 supply risk;

7 (D) expertise in feedstock market rules and
8 practices, which may be particularized to the specific
9 type of feedstock to be purchased in that procurement
10 event;

11 (E) expertise in credit and contract protocols;

12 (F) adequate resources to perform and fulfill the
13 required functions and responsibilities; and

14 (G) the absence of a conflict of interest and
15 inappropriate bias for or against potential bidders or
16 the initial clean coal facility.

17 (3) The Agency shall provide the initial clean coal
18 facility and other interested parties with the lists of
19 qualified experts or expert consulting firms identified
20 through the request for qualifications processes that are
21 under consideration to develop the feedstock procurement
22 plans and to serve as the feedstock procurement
23 administrator. The Agency shall also provide the initial
24 clean coal facility and other interested parties with each
25 qualified expert's or expert consulting firm's response to
26 the request for qualifications. All information provided

1 under this subparagraph (3) shall also be provided to the
2 Commission. The Agency may provide by rule for fees
3 associated with supplying the information to the initial
4 clean coal facility and other interested parties. The
5 initial clean coal facility and other interested parties
6 shall, within 5 business days after receiving the lists and
7 information, notify the Agency in writing if they object to
8 any experts or expert consulting firms on the lists.

9 Objections shall be based on:

10 (A) failure to satisfy qualification criteria;

11 (B) identification of a conflict of interest; or

12 (C) evidence of inappropriate bias for or against
13 potential bidders or the initial clean coal facility.

14 The Agency shall remove experts or expert consulting
15 firms from the lists within 10 days after receiving the
16 objections if there is a reasonable basis for an objection
17 and provide the updated lists to the initial clean coal
18 facility and other interested parties. If the Agency fails
19 to remove an expert or expert consulting firm from a list,
20 then an objecting party may seek review by the Commission
21 within 5 days thereafter by filing a petition, and the
22 Commission shall render a ruling on the petition within 10
23 days. There is no right of appeal of the Commission's
24 ruling.

25 (4) The Agency shall issue requests for proposals to
26 the qualified experts or expert consulting firms to develop

1 a feedstock procurement plan for the initial clean coal
2 facility and to serve as feedstock procurement
3 administrator.

4 (5) The Agency shall select an expert or expert
5 consulting firm to develop feedstock procurement plans
6 based on the proposals submitted and shall award at least
7 one-year contracts to those selected with an option for the
8 Agency for renewal for an additional length of time equal
9 to the term of the contract.

10 (6) The Agency shall select, with approval of the
11 Commission, an expert or expert consulting firm to serve as
12 feedstock procurement administrator based on the proposals
13 submitted. If the Commission rejects the Agency's
14 selection within 5 days after being notified of the
15 Agency's selection, then the Agency shall submit another
16 recommendation within 3 days after the Commission's
17 rejection based on the proposals submitted. The Agency
18 shall award a 5-year contract to the expert or expert
19 consulting firm so selected with Commission approval with
20 an option for the Agency for a 5-year renewal.

21 (b) The experts or expert consulting firms retained by the
22 Agency under subsection (a) of this Section shall, as
23 appropriate, prepare procurement plans, and conduct a
24 competitive procurement process as prescribed in Section
25 16-111.5 of the Public Utilities Act, to ensure adequate,
26 reliable, affordable, efficient, and environmentally

1 sustainable electric service at the lowest total cost over
2 time, taking into account any benefits of price stability, for
3 eligible retail customers of electric utilities that on
4 December 31, 2005 provided electric service to at least 100,000
5 customers in the State of Illinois.

6 (b-5) The experts or expert consulting firms retained by
7 the Agency pursuant to subsection (a-5) shall, as appropriate,
8 prepare feedstock procurement plans and conduct a competitive
9 feedstock procurement process as prescribed in Section 1-78 of
10 this Act to ensure adequate, reliable, affordable feedstocks,
11 taking into account any benefits of price stability, for the
12 initial clean coal facility.

13 (c) Renewable portfolio standard.

14 (1) The procurement plans shall include cost-effective
15 renewable energy resources. A minimum percentage of each
16 utility's total supply to serve the load of eligible retail
17 customers, as defined in Section 16-111.5(a) of the Public
18 Utilities Act, procured for each of the following years
19 shall be generated from cost-effective renewable energy
20 resources: at least 2% by June 1, 2008; at least 4% by June
21 1, 2009; at least 5% by June 1, 2010; at least 6% by June 1,
22 2011; at least 7% by June 1, 2012; at least 8% by June 1,
23 2013; at least 9% by June 1, 2014; at least 10% by June 1,
24 2015; and increasing by at least 1.5% each year thereafter
25 to at least 25% by June 1, 2025. For periods beginning on
26 and after June 1, 2012, the procurement plans shall include

1 the procurement of renewable energy credits equal to the
2 projected kilowatthour usage of the delivery services
3 non-eligible retail customers within the service area of
4 the electric utility times the applicable renewable energy
5 resource percentage for that year as set forth under this
6 paragraph (1). To the extent that it is available, at least
7 75% of the renewable energy resources used to meet these
8 standards shall come from wind generation and, beginning on
9 June 1, 2011, at least the following percentages of the
10 renewable energy resources used to meet these standards
11 shall come from photovoltaics on the following schedule:
12 0.5% by June 1, 2012, 1.5% by June 1, 2013; 3% by June 1,
13 2014; and 6% by June 1, 2015 and thereafter. Of the
14 renewable energy resources procured pursuant to this
15 Section at least the following percentages shall come from
16 distributed renewable energy generation devices: 0.5% by
17 June 1, 2013, 0.75% by June 1, 2014, and 1% by June 1, 2015
18 and thereafter. To the extent available, half of the
19 renewable energy resources procured from distributed
20 renewable energy generation shall come from devices of less
21 than 25 kilowatts in nameplate capacity. Renewable energy
22 resources procured from distributed generation devices may
23 also count towards the required percentages for wind and
24 solar photovoltaics. Procurement of renewable energy
25 resources from distributed renewable energy generation
26 devices shall be done on an annual basis through multi-year

1 contracts of no less than 5 years.

2 The Agency shall create credit requirements for
3 suppliers of distributed renewable energy. In order to
4 minimize the administrative burden on contracting
5 entities, the Agency shall solicit the use of third-party
6 organizations to aggregate distributed renewable energy
7 into groups of no less than one megawatt in installed
8 capacity. These third-party organizations shall administer
9 contracts with individual distributed renewable energy
10 generation device owners. An individual distributed
11 renewable energy generation device owner shall have the
12 ability to measure the output of his or her distributed
13 renewable energy generation device. For purposes of this
14 subsection (c), "cost-effective" means that the costs of
15 procuring renewable energy resources to serve the load of
16 the electric utility's eligible retail customers and the
17 costs of procuring renewable energy credits with respect to
18 the kilowatthour usage of the delivery services
19 non-eligible retail customers within the electric
20 utility's service area do not cause the applicable limits
21 ~~limit~~ stated in paragraph (2) of this subsection (c) to be
22 exceeded and do not exceed benchmarks based on market
23 prices for renewable energy resources in the region, which
24 shall be developed by the procurement administrator, in
25 consultation with the Commission staff, Agency staff, and
26 the procurement monitor and shall be subject to Commission

1 review and approval; provided that only the benchmarks, and
2 not the remainder of the definition of "cost-effective",
3 shall be applicable to the procurement of renewable energy
4 credits on and after June 1, 2012 in respect of the
5 forecasted kilowatthour usage of the delivery services
6 non-eligible retail customers in the electric utility's
7 service area.

8 (2) For purposes of this subsection (c), the required
9 procurement of cost-effective renewable energy resources
10 to serve the load of the electric utility's eligible retail
11 customers for a particular year shall be measured as a
12 percentage of the actual amount of electricity
13 (megawatt-hours) supplied by the electric utility to
14 eligible retail customers in the planning year ending
15 immediately prior to the procurement and, for periods
16 beginning on and after June 1, 2012, the required
17 procurement of cost effective renewable energy credits
18 with respect to the delivery services non-eligible retail
19 customers of the electric utility shall be based on the
20 actual amount of electricity (megawatt-hours) delivered by
21 the electric utility to delivery services non-eligible
22 retail customers in its service area in the planning year
23 ending immediately prior to the procurement. For purposes
24 of this subsection (c), the amount paid per kilowatthour
25 means the total amount paid for electric service expressed
26 on a per kilowatthour basis. For purposes of this

1 subsection (c), the total amount paid for electric service
2 includes without limitation amounts paid for supply,
3 transmission, distribution, surcharges, and add-on taxes.

4 Notwithstanding the requirements of this subsection
5 (c), the total of renewable energy resources procured
6 pursuant to the procurement plan with respect to the load
7 of the electric utility's eligible retail customers for any
8 single year shall be reduced by an amount necessary to
9 limit the annual estimated average net increase due to the
10 costs of these resources included in the amounts paid by
11 eligible retail customers in connection with electric
12 service to:

13 (A) in 2008, no more than 0.5% of the amount paid
14 per kilowatthour by those customers during the year
15 ending May 31, 2007;

16 (B) in 2009, the greater of an additional 0.5% of
17 the amount paid per kilowatthour by those customers
18 during the year ending May 31, 2008 or 1% of the amount
19 paid per kilowatthour by those customers during the
20 year ending May 31, 2007;

21 (C) in 2010, the greater of an additional 0.5% of
22 the amount paid per kilowatthour by those customers
23 during the year ending May 31, 2009 or 1.5% of the
24 amount paid per kilowatthour by those customers during
25 the year ending May 31, 2007;

26 (D) in 2011, the greater of an additional 0.5% of

1 the amount paid per kilowatthour by those customers
2 during the year ending May 31, 2010 or 2% of the amount
3 paid per kilowatthour by those customers during the
4 year ending May 31, 2007; and

5 (E) thereafter, the amount of renewable energy
6 resources procured pursuant to the procurement plan
7 for any single year shall be reduced by an amount
8 necessary to limit the estimated average net increase
9 due to the cost of these resources included in the
10 amounts paid by eligible retail customers in
11 connection with electric service to no more than the
12 greater of 2.015% of the amount paid per kilowatthour
13 by those customers during the year ending May 31, 2007
14 or the incremental amount per kilowatthour paid for
15 these resources in 2011.

16 The foregoing limitations shall not be applicable
17 to the purchase, for periods beginning on and after
18 June 1, 2012, of renewable energy credits in respect of
19 the projected kilowatthour usage of the electric
20 utility's delivery services non-eligible retail
21 customers. For periods beginning on and after June 1,
22 2012, any excluded renewable energy resources contract
23 costs shall be recoverable by the electric utility
24 through its tariffed charges for delivery services
25 pursuant to Section 16-108 of the Public Utilities Act
26 to its residential class delivery services

1 non-eligible retail customers.

2 Notwithstanding the requirements of this
3 subsection (c), for years beginning on and after June
4 1, 2012, the total amount of renewable energy credits
5 procured pursuant to the procurement plan with respect
6 to the kilowatthour usage of the delivery services
7 non-eligible retail customers in the electric
8 utility's service area shall be reduced by an amount
9 necessary to limit the cost of renewable energy credits
10 and excluded renewable energy resources costs included
11 in the electric utility's charges per kilowatthour for
12 delivery services to its delivery services
13 non-eligible retail customers to an amount equal to no
14 more than 2.015% of the amount paid by the electric
15 utility's eligible retail customers per kilowatthour
16 for electric service during the year ended May 31,
17 2007.

18 No later than June 30, 2011, the Commission shall
19 review the limitation on the amount of renewable energy
20 resources procured pursuant to this subsection (c) and
21 report to the General Assembly its findings as to
22 whether that limitation unduly constrains the
23 procurement of cost-effective renewable energy
24 resources.

25 (3) (Blank). ~~Through June 1, 2011, renewable energy~~
26 ~~resources shall be counted for the purpose of meeting the~~

1 ~~renewable energy standards set forth in paragraph (1) of~~
2 ~~this subsection (c) only if they are generated from~~
3 ~~facilities located in the State, provided that~~
4 ~~cost-effective renewable energy resources are available~~
5 ~~from those facilities. If those cost effective resources~~
6 ~~are not available in Illinois, they shall be procured in~~
7 ~~states that adjoin Illinois and may be counted towards~~
8 ~~compliance. If those cost effective resources are not~~
9 ~~available in Illinois or in states that adjoin Illinois,~~
10 ~~they shall be purchased elsewhere and shall be counted~~
11 ~~towards compliance. After June 1, 2011, cost-effective~~
12 ~~renewable energy resources located in Illinois and in~~
13 ~~states that adjoin Illinois may be counted towards~~
14 ~~compliance with the standards set forth in paragraph (1) of~~
15 ~~this subsection (c). If those cost effective resources are~~
16 ~~not available in Illinois or in states that adjoin~~
17 ~~Illinois, they shall be purchased elsewhere and shall be~~
18 ~~counted towards compliance.~~

19 (4) The electric utility shall retire all renewable
20 energy credits used to comply with the standard.

21 (5) Beginning with the year commencing June 1, 2010,
22 and ending with the year commencing June 1, 2011, an
23 electric utility subject to this subsection (c) shall apply
24 the lesser of the maximum alternative compliance payment
25 rate or the most recent estimated alternative compliance
26 payment rate for its service territory for the

1 corresponding compliance period, established pursuant to
2 subsection (d) of Section 16-115D of the Public Utilities
3 Act to its retail customers that take service pursuant to
4 the electric utility's hourly pricing tariff or tariffs.
5 The electric utility shall retain all amounts collected as
6 a result of the application of the alternative compliance
7 payment rate or rates to such customers, and, beginning in
8 2011, the utility shall include in the information provided
9 under item (1) of subsection (d) of Section 16-111.5 of the
10 Public Utilities Act the amounts collected under the
11 alternative compliance payment rate or rates for the prior
12 year ending May 31. Notwithstanding any limitation on the
13 procurement of renewable energy resources imposed by item
14 (2) of this subsection (c), the Agency shall increase its
15 spending on the purchase of renewable energy resources to
16 be procured by the electric utility for the next plan year
17 by an amount equal to the amounts collected by the utility
18 under the alternative compliance payment rate or rates in
19 the prior year ending May 31. For years commencing on and
20 after June 1, 2012, the kilowatthours supplied by the
21 electric utility to its retail customers that take service
22 pursuant to the electric utility's hourly pricing tariff or
23 tariffs shall be considered usage of delivery services
24 non-eligible retail customers.

25 (6) Each annual procurement plan for periods beginning
26 on and after June 1, 2012 shall include (i) the procurement

1 of electricity from cost-effective renewable energy
2 resources to meet the renewable energy resource
3 requirements specified in paragraph (2) of this subsection
4 (c) with respect to the load of the electric utility's
5 eligible retail customers and (ii) the procurement of
6 renewable energy credits to meet the renewable energy
7 resource requirements specified in paragraph (2) of this
8 subsection (c) with respect to the kilowatthour usage of
9 the electric utility's delivery services non-eligible
10 retail customers; provided that the electric utility's
11 obligation to purchase renewable energy credits with
12 respect to the kilowatthour usage of delivery services
13 non-eligible retail customers shall be reduced by the
14 amount of any purchases of renewable energy credits by the
15 Agency for the year in respect of the electric utility's
16 service area pursuant to Section 1-56 of this Act using the
17 Illinois Power Agency Renewable Energy Resources Fund. All
18 procurements of bundled renewable energy resources and
19 renewable energy credits in the procurement plans of the
20 electric utilities shall be pursuant to competitive
21 bidding processes and shall be approved by the Commission
22 pursuant to Section 16-111.5 of the Public Utilities Act.

23 (d) Clean coal portfolio standard.

24 (1) The General Assembly finds that there are abundant
25 and cost-effective supplies of high volatile rank
26 bituminous coal with a sulfur content of at least 1.7

1 pounds per million btu energy content, and that it is
2 technologically feasible to produce electric energy using
3 such coal supplies reliably. The General Assembly further
4 finds that state-of-the-art gasification systems are
5 available to convert coal supplies with the foregoing
6 characteristics into gas and that it is feasible to use
7 such gas to generate electric energy without exceeding
8 allowable emission rates for sulfur dioxide, nitrogen
9 oxides, carbon monoxide, particulates, and mercury for a
10 natural gas-fired combined-cycle facility of the same size
11 as and in the same location as a clean coal facility
12 incorporating a gasification system and a combined cycle
13 power block. The General Assembly also finds that it is
14 feasible to engineer and construct systems designed to
15 capture and sequester the percentages of the carbon dioxide
16 emissions from clean coal facilities as specified in this
17 Act. Accordingly, the General Assembly finds it necessary
18 for the health, safety, welfare, and prosperity of Illinois
19 citizens to require Illinois electric utilities and
20 alternative electric retail electric suppliers to contract
21 with the initial clean coal facility to meet a portion of
22 the needs of each such electric utility's and alternative
23 retail electric supplier's retail load on the terms and
24 conditions described under this Act.

25 The procurement plans under subsection (a) of this
26 Section shall include cost effective electricity generated

1 using clean coal. Each electric utility shall enter into
2 one or more sourcing agreements with the initial clean coal
3 facility, as provided in paragraph (3) of this subsection
4 (d), covering electricity generated by the initial clean
5 coal facility representing (A) at least 5% of that ~~each~~
6 utility's ~~total supply to serve the~~ load of eligible retail
7 customers in the immediately preceding year ~~2015 and each~~
8 ~~year thereafter~~, as described in paragraph (3) of this
9 subsection (d), or (B) such lesser amount as may be
10 available from the initial clean coal facility, reduced by
11 ~~subject to~~ the limits on the amount of power to be
12 purchased specified in paragraph (2) of this subsection
13 (d). It is the goal of the State that by January 1, 2025,
14 25% of the electricity used in the State shall be generated
15 by cost-effective clean coal facilities. For purposes of
16 this subsection (d), "cost-effective" means that the
17 expenditures pursuant to such sourcing agreements do not
18 cause the limit stated in paragraph (2) of this subsection
19 (d) to be exceeded and do not exceed cost-based benchmarks,
20 which shall be developed to assess all expenditures
21 pursuant to such sourcing agreements covering electricity
22 generated by clean coal facilities, other than the initial
23 clean coal facility, by the procurement administrator, in
24 consultation with the Commission staff, Agency staff, and
25 the procurement monitor and shall be subject to Commission
26 review and approval.

1 ~~(A)~~ A utility party to a sourcing agreement shall
2 immediately retire any emission credits that it receives in
3 connection with the electricity covered by such agreement.

4 ~~(B)~~ Utilities shall maintain adequate records
5 documenting the purchases under the sourcing agreement to
6 comply with this subsection (d) and shall file an
7 accounting with the load forecast that must be filed with
8 the Agency by July 15 of each year, in accordance with
9 subsection (d) of Section 16-111.5 of the Public Utilities
10 Act.

11 ~~(C)~~ A utility shall be deemed to have complied with the
12 clean coal portfolio standard specified in this subsection
13 (d) if the utility enters into a sourcing agreement as
14 required by this subsection (d).

15 (2) For purposes of this subsection (d), the ~~required~~
16 ~~execution of~~ sourcing agreements with the initial clean
17 coal facility for a particular year shall be measured as a
18 percentage of the actual amount of electricity
19 (megawatt-hours) supplied by the electric utility to
20 eligible retail customers in the immediately preceding
21 year ~~planning year ending immediately prior to the~~
22 ~~agreement's execution~~. For purposes of this subsection
23 (d), the amount paid per kilowatthour means the total
24 amount paid for electric service expressed on a per
25 kilowatthour basis. For purposes of this subsection (d),
26 the total amount paid for electric service includes without

1 limitation amounts paid for supply, transmission,
2 distribution, surcharges and add-on taxes.

3 Notwithstanding the requirements of this subsection
4 (d), the total amount purchased ~~paid~~ under sourcing
5 agreements with the initial clean coal facility ~~clean coal~~
6 ~~facilities~~ pursuant to the procurement plan for any given
7 year shall be reduced by an amount necessary to limit the
8 annual estimated average net increase due to the costs of
9 these resources included in the amounts paid by eligible
10 retail customers in connection with electric service to:

11 (A) in 2010, no more than 0.5% of the amount paid
12 per kilowatthour by those customers during the year
13 ending May 31, 2009;

14 (B) in 2011, the greater of an additional 0.5% of
15 the amount paid per kilowatthour by those customers
16 during the year ending May 31, 2010 or 1% of the amount
17 paid per kilowatthour by those customers during the
18 year ending May 31, 2009;

19 (C) in 2012, the greater of an additional 0.5% of
20 the amount paid per kilowatthour by those customers
21 during the year ending May 31, 2011 or 1.5% of the
22 amount paid per kilowatthour by those customers during
23 the year ending May 31, 2009;

24 (D) in 2013, the greater of an additional 0.5% of
25 the amount paid per kilowatthour by those customers
26 during the year ending May 31, 2012 or 2% of the amount

1 paid per kilowatthour by those customers during the
2 year ending May 31, 2009; and

3 (E) thereafter:

4 (i) A calculation shall be made for each year
5 to determine whether, the total amount paid under
6 sourcing agreements with clean coal facilities
7 pursuant to the procurement plan for any single
8 year shall be reduced by an amount necessary to
9 limit the estimated average net per kilowatthour
10 increase due to the cost of electric power
11 purchased under sourcing agreements and these
12 resources included in the amounts paid by small
13 electric eligible retail customers in connection
14 with electric service exceeds to no more than the
15 greater of (i) 2.015% of the amount paid per
16 kilowatthour by eligible retail ~~these~~ customers
17 during the year ending May 31, 2009 or (ii) the
18 incremental amount per kilowatthour paid for these
19 resources in 2013. These requirements may be
20 altered only as provided by statute. For purposes
21 of such calculation, such average net per
22 kilowatthour increase in rates of small electric
23 customers that are not eligible retail customers
24 shall be deemed to be equal to such average net per
25 kilowatthour increase in rates of eligible retail
26 customers.

1 (ii) If for any year the small customer rate
2 impact would exceed the limitation described in
3 item (i) of this subparagraph (E), the clean coal
4 fraction for each clean coal electricity buyer
5 shall be adjusted for such year in a manner that
6 will result in (a) the quantity of electric power
7 projected to be purchased by each clean coal
8 electricity buyer being reduced by an amount
9 sufficient to result in such deemed rate impact on
10 all small electric customers (whether served by
11 electric utilities or alternative retail electric
12 suppliers) being equal to such limitation for such
13 year and (b) any such reductions in amounts
14 allocated to the clean coal electricity buyers in
15 order to achieve the objective described in clause
16 (a) of this item (ii) being allocated to, and
17 purchased and paid for by, the clean coal
18 electricity buyers in proportion to their retail
19 sales to large electric customers.

20 (iii) Each year, after taking account of the
21 adjustment, if any, provided for in item (ii) of
22 this subparagraph (E), a calculation shall be made
23 to determine whether the large customer deemed
24 rate impact for such year exceeds \$0.005 per
25 kilowatthour. The "large customer deemed rate
26 impact" for any year is the projected increase in

1 electric rates of large electric customers
2 (whether served by electric utilities or
3 alternative retail electric suppliers) due to the
4 cost of electric power purchased under sourcing
5 agreements to the extent it is based on each clean
6 coal electricity buyer's retail sales to large
7 electric customers, which shall be calculated in
8 substantially the same manner as the calculation
9 of rate impact on small electric customers, and
10 shall assume that such cost of purchases under
11 sourcing agreements is passed through
12 proportionally by the clean coal electricity
13 buyers to their large electric customers. The
14 calculation of the large customer deemed rate
15 impact shall (a) assume that the total retail sales
16 (expressed in kilowatthours sold) to large
17 electric customers by all clean coal electricity
18 buyers for any year is the greater of the actual
19 amount of such sales in such year and the amount of
20 such sales in 2009 and (b) exclude from the
21 calculation any actual costs for such year
22 incurred by the initial clean coal facility to the
23 extent such costs exceed the corresponding amount
24 assumed in the "reference case" of the facility
25 cost report for the initial clean coal facility for
26 such year and are not principally within the

1 reasonable control of the initial clean coal
2 facility.

3 Any operating costs or revenues deviating from
4 the corresponding costs assumed in the "reference
5 case" of the facility cost report for the initial
6 clean coal facility as a result of changes in
7 market prices, including, but not limited to,
8 prices of coal, natural gas, electricity,
9 by-products, and emissions allowances, shall be
10 deemed to be outside of the reasonable control of
11 the initial clean coal facility and excluded from
12 the calculation.

13 Any costs exceeding the corresponding costs
14 assumed in the "reference case" of the facility
15 cost report for the initial clean coal facility as
16 a result of changes in capital costs, fixed
17 operating costs, variable operating costs,
18 operating efficiency, and availability, except in
19 each case to the extent resulting from a change in
20 market prices or from a change in law, as defined
21 in subsection (b) of Section 1-76 of this Act,
22 shall be deemed to be within the reasonable control
23 of the initial clean coal facility and included in
24 the calculation.

25 (iv) If for any year the large customer deemed
26 rate impact would exceed the limitation described

1 in item (iii) of this subparagraph (E), the
2 quantity of electric power required to be
3 purchased by each clean coal electricity buyer
4 that serves large electric customers under its
5 sourcing agreement for such year shall be reduced
6 by such amount as will result in the large customer
7 deemed rate impact being equal to such limitation
8 for such year, and the clean coal fractions of each
9 clean coal electricity buyer that serves large
10 electric customers shall be adjusted for such year
11 to reflect this reduction; provided, however, that
12 the reduction under this item (iv) shall not exceed
13 in any year an amount that would result in revenues
14 under the sourcing agreements being reduced by
15 more than \$50,000,000 in the aggregate for such
16 year. Any quantities of electric power not
17 required to be purchased pursuant to the operation
18 of the immediately preceding sentence may be
19 disposed of by the initial clean coal facility for
20 its own account, and the proceeds of any sales of
21 such electric power shall not be included in the
22 formula rate.

23 (v) The details of the calculations
24 contemplated by this subparagraph (E) shall be set
25 forth in the sourcing agreements.

26 (vi) No later than June 30, 2015, the

1 Commission shall review the limitation on the
2 total amount paid under sourcing agreements, if
3 any, with the initial clean coal facility
4 ~~facilities~~ pursuant to this subsection (d) and
5 report to the General Assembly its findings as to
6 the effect of the ~~whether that~~ limitation on the
7 initial clean coal facility, electric utilities,
8 alternative retail electric suppliers, and
9 customers of the electric utilities and the
10 alternative retail electric suppliers ~~unduly~~
11 ~~constrains the amount of electricity generated by~~
12 ~~cost-effective clean coal facilities that is~~
13 ~~covered by sourcing agreements.~~

14 (3) Initial clean coal facility. In order to promote
15 the use ~~development~~ of clean coal electric power ~~facilities~~
16 in Illinois, each electric utility subject to this Section
17 shall execute a sourcing agreement to source electricity
18 from the initial clean coal facility. The Agency shall
19 accept applications to be designated the initial clean coal
20 facility for a period of 30 days after the effective date
21 of this amendatory Act of the 97th General Assembly. Each
22 application shall include a proposed sourcing agreement in
23 accordance with the requirements of this paragraph (3) and
24 information showing that the applicant meets the other
25 criteria set out in the definition of initial clean coal
26 facility provided in Section 1-10 of this Act. In the event

1 that only one proposed initial clean coal facility that
2 meets each of the requirements submits a proposed sourcing
3 agreement to the Agency within that time period, the Agency
4 shall select such proposed initial clean coal facility as
5 the initial clean coal facility. In the event that more
6 than one proposed initial clean coal facility that meets
7 each of the requirements submit a proposed sourcing
8 agreement to the Agency within that time period, the Agency
9 shall select as the initial clean coal facility the
10 electric generating facility that the Agency determines
11 best promotes the needs and interests of the citizens of
12 the State of Illinois. In making such determination, the
13 Agency shall take into account for each proposed initial
14 clean coal facility the technical and economic feasibility
15 of such facility, including access to capital and the
16 financeability of the facility based upon the proposed
17 sourcing agreement, the projected environmental
18 performance of such facility, the ability of such facility
19 to be dispatched to support the transmission grid's
20 capability to integrate with wind, solar, and other
21 intermittent resources, and the reliability and cost of
22 electric transmission service from the facility to the
23 electric utilities. The Agency shall announce the
24 designation of the initial clean coal facility within 45
25 days after the effective date of this amendatory Act of the
26 97th General Assembly. a proposed clean coal facility in

1 ~~Illinois (the "initial clean coal facility") that will have~~
2 ~~a nameplate capacity of at least 500 MW when commercial~~
3 ~~operation commences, that has a final Clean Air Act permit~~
4 ~~on the effective date of this amendatory Act of the 95th~~
5 ~~General Assembly, and that will meet the definition of~~
6 ~~clean coal facility in Section 1-10 of this Act when~~
7 ~~commercial operation commences. The sourcing agreements~~
8 ~~with this initial clean coal facility shall be subject to~~
9 ~~both approval of the initial clean coal facility by the~~
10 ~~General Assembly and satisfaction of the requirements of~~
11 ~~paragraph (4) of this subsection (d) and shall be executed~~
12 ~~within 90 days after any such approval by the General~~
13 ~~Assembly.~~ The Agency and the Commission shall have
14 authority to inspect all books and records associated with
15 the initial clean coal facility during the term of such a
16 sourcing agreement. A utility's sourcing agreement for
17 electricity produced by the initial clean coal facility
18 shall include:

19 (A) provisions governing the price paid for
20 electricity generated by the initial clean coal
21 facility, which shall be determined according to
22 clause (iv) of subparagraph (B) of this paragraph (3);
23 ~~a formula contractual price (the "contract price")~~
24 ~~approved pursuant to paragraph (4) of this subsection~~
25 ~~(d), which shall:~~

26 (i) ~~be determined using a cost of service~~

1 ~~methodology employing either a level or deferred~~
2 ~~capital recovery component, based on a capital~~
3 ~~structure consisting of 45% equity and 55% debt,~~
4 ~~and a return on equity as may be approved by the~~
5 ~~Federal Energy Regulatory Commission, which in any~~
6 ~~case may not exceed the lower of 11.5% or the rate~~
7 ~~of return approved by the General Assembly~~
8 ~~pursuant to paragraph (4) of this subsection (d);~~
9 ~~and~~

10 ~~(ii) provide that all miscellaneous net~~
11 ~~revenue, including but not limited to net revenue~~
12 ~~from the sale of emission allowances, if any,~~
13 ~~substitute natural gas, if any, grants or other~~
14 ~~support provided by the State of Illinois or the~~
15 ~~United States Government, firm transmission~~
16 ~~rights, if any, by products produced by the~~
17 ~~facility, energy or capacity derived from the~~
18 ~~facility and not covered by a sourcing agreement~~
19 ~~pursuant to paragraph (3) of this subsection (d) or~~
20 ~~item (5) of subsection (d) of Section 16-115 of the~~
21 ~~Public Utilities Act, whether generated from the~~
22 ~~synthesis gas derived from coal, from SNG, or from~~
23 ~~natural gas, shall be credited against the revenue~~
24 ~~requirement for this initial clean coal facility;~~

25 (B) power purchase provisions, which shall:

26 (i) provide that the utility party to the

1 sourcing agreement shall pay the contract price
2 under such sourcing agreement determined pursuant
3 to subparagraph (A);

4 (ii) require delivery of electricity by the
5 initial clean coal facility to the regional
6 transmission organization market of the utility
7 party to the sourcing agreement;

8 (iii) require the utility party to the
9 sourcing agreement to buy from the initial clean
10 coal facility in each hour an amount of energy
11 equal to all clean coal energy made available from
12 the initial clean coal facility during such hour
13 times the clean coal fraction for such utility for
14 the applicable month, provided that the amount
15 purchased by the utility in any year will be
16 limited by paragraph (2) of this subsection (d);

17 (iv) require the utility party to the sourcing
18 agreement to pay to the initial clean coal facility
19 for each month the following: the electric
20 generation variable charge multiplied by the
21 quantity of energy required to be purchased by such
22 utility in such month plus the product of the sum
23 of the fuel charge; plus the fixed monthly charge,
24 based on the MW of nameplate capacity of the
25 initial clean coal facility's power block, for
26 such month, multiplied by the fraction determined

1 for the utility for such month according to clause
2 (iii) of this subparagraph (B); for purposes of
3 this clause (iv), "electric generation variable
4 charge", "fuel charge", and "fixed monthly charge"
5 shall each have the meaning ascribed to the term in
6 subsection (a) of Section 1-76 of this Act; and
7 (v) be considered pre-existing contracts in
8 the utility's procurement plans for eligible
9 retail customers; The provisions of this
10 subparagraph (B) are severable under Section 1.31
11 of the Statute on Statutes.

12 ~~(B) power purchase provisions, which shall:~~

13 ~~(i) provide that the utility party to such~~
14 ~~sourcing agreement shall pay the contract price~~
15 ~~for electricity delivered under such sourcing~~
16 ~~agreement;~~

17 ~~(ii) require delivery of electricity to the~~
18 ~~regional transmission organization market of the~~
19 ~~utility that is party to such sourcing agreement;~~

20 ~~(iii) require the utility party to such~~
21 ~~sourcing agreement to buy from the initial clean~~
22 ~~coal facility in each hour an amount of energy~~
23 ~~equal to all clean coal energy made available from~~
24 ~~the initial clean coal facility during such hour~~
25 ~~times a fraction, the numerator of which is such~~
26 ~~utility's retail market sales of electricity~~

1 ~~(expressed in kilowatthours sold) in the State~~
2 ~~during the prior calendar month and the~~
3 ~~denominator of which is the total retail market~~
4 ~~sales of electricity (expressed in kilowatthours~~
5 ~~sold) in the State by utilities during such prior~~
6 ~~month and the sales of electricity (expressed in~~
7 ~~kilowatthours sold) in the State by alternative~~
8 ~~retail electric suppliers during such prior month~~
9 ~~that are subject to the requirements of this~~
10 ~~subsection (d) and paragraph (5) of subsection (d)~~
11 ~~of Section 16-115 of the Public Utilities Act,~~
12 ~~provided that the amount purchased by the utility~~
13 ~~in any year will be limited by paragraph (2) of~~
14 ~~this subsection (d); and~~

15 ~~(iv) be considered pre existing contracts in~~
16 ~~such utility's procurement plans for eligible~~
17 ~~retail customers;~~

18 (C) contract for differences provisions, which
19 shall:

20 (i) require the utility party to such sourcing
21 agreement to contract with the initial clean coal
22 facility in each hour with respect to an amount of
23 energy equal to all clean coal energy made
24 available from the initial clean coal facility
25 during such hour times the clean coal a fraction
26 for such utility for applicable month, the

1 ~~numerator of which is such utility's retail market~~
2 ~~sales of electricity (expressed in kilowatthours~~
3 ~~sold) in the utility's service territory in the~~
4 ~~State during the prior calendar month and the~~
5 ~~denominator of which is the total retail market~~
6 ~~sales of electricity (expressed in kilowatthours~~
7 ~~sold) in the State by utilities during such prior~~
8 ~~month and the sales of electricity (expressed in~~
9 ~~kilowatthours sold) in the State by alternative~~
10 ~~retail electric suppliers during such prior month~~
11 ~~that are subject to the requirements of this~~
12 ~~subsection (d) and paragraph (5) of subsection (d)~~
13 ~~of Section 16-115 of the Public Utilities Act,~~
14 provided that the amount purchased ~~paid~~ by the
15 utility in any year will be limited by paragraph
16 (2) of this subsection (d);

17 (ii) provide that the utility's payment
18 obligation in respect of the quantity of
19 electricity determined pursuant to the preceding
20 clause (i) for any month shall be ~~limited to an~~
21 ~~amount~~ equal to ~~(1)~~ the difference of the electric
22 generation variable charge, the fuel charge, and
23 the fixed monthly charge, that would be payable by
24 the utility for such month based on such quantity
25 of electricity between the contract price
26 ~~determined~~ pursuant to clause (iv) of subparagraph

1 (B) ~~(A)~~ of this paragraph (3), minus the product of
2 (1) ~~of this subsection (d) and~~ the day-ahead price
3 for electricity delivered to the regional
4 transmission organization market of the electric
5 utility that is party to such sourcing agreement
6 (or any successor delivery point at which such
7 utility's supply obligations are financially
8 settled on an hourly basis) (the "reference
9 price") on the day preceding the day on which the
10 electricity is delivered to the initial clean coal
11 facility busbar, multiplied by (2) the quantity of
12 electricity determined pursuant to the preceding
13 clause (i), calculated for each hour in such month;
14 and

15 (iii) not require the utility to take physical
16 delivery of the electricity produced by the
17 facility;

18 (D) general provisions, which shall:

19 (i) specify a term of no more than 30 years,
20 commencing on the commercial operation date of the
21 facility;

22 (ii) provide that electric utilities shall
23 maintain adequate records documenting purchases
24 under the sourcing agreements entered into to
25 comply with this subsection (d) and shall file an
26 accounting with the load forecast that must be

1 filed with the Agency by July 15 of each year, in
2 accordance with subsection (d) of Section 16-111.5
3 of the Public Utilities Act.

4 (iii) provide that all costs associated with
5 the initial clean coal facility will be
6 periodically reported to the Federal Energy
7 Regulatory Commission and to purchasers in
8 accordance with applicable laws governing
9 cost-based wholesale power contracts;

10 (iv) permit the Illinois Power Agency, if it is
11 so authorized by law, to assume ownership of the
12 initial clean coal facility, without monetary
13 consideration and otherwise on reasonable terms
14 acceptable to the Agency, if the Agency so requests
15 no less than 3 years prior to the end of the stated
16 contract term;

17 (v) require the owner of the initial clean coal
18 facility to comply with provisions reflecting
19 those set forth in Section 1-76.5 of this Act;
20 ~~provide documentation to the Commission each year,~~
21 ~~starting in the facility's first year of~~
22 ~~commercial operation, accurately reporting the~~
23 ~~quantity of carbon emissions from the facility~~
24 ~~that have been captured and sequestered and report~~
25 ~~any quantities of carbon released from the site or~~
26 ~~sites at which carbon emissions were sequestered~~

1 ~~in prior years, based on continuous monitoring of~~
2 ~~such sites. If, in any year after the first year of~~
3 ~~commercial operation, the owner of the facility~~
4 ~~fails to demonstrate that the initial clean coal~~
5 ~~facility captured and sequestered at least 50% of~~
6 ~~the total carbon emissions that the facility would~~
7 ~~otherwise emit or that sequestration of emissions~~
8 ~~from prior years has failed, resulting in the~~
9 ~~release of carbon dioxide into the atmosphere, the~~
10 ~~owner of the facility must offset excess~~
11 ~~emissions. Any such carbon offsets must be~~
12 ~~permanent, additional, verifiable, real, located~~
13 ~~within the State of Illinois, and legally and~~
14 ~~practicably enforceable. The cost of such offsets~~
15 ~~for the facility that are not recoverable shall not~~
16 ~~exceed \$15 million in any given year. No costs of~~
17 ~~any such purchases of carbon offsets may be~~
18 ~~recovered from a utility or its customers. All~~
19 ~~carbon offsets purchased for this purpose and any~~
20 ~~carbon emission credits associated with~~
21 ~~sequestration of carbon from the facility must be~~
22 ~~permanently retired. The initial clean coal~~
23 ~~facility shall not forfeit its designation as a~~
24 ~~clean coal facility if the facility fails to fully~~
25 ~~comply with the applicable carbon sequestration~~
26 ~~requirements in any given year, provided the~~

1 ~~requisite offsets are purchased. However, the~~
2 ~~Attorney General, on behalf of the People of the~~
3 ~~State of Illinois, may specifically enforce the~~
4 ~~facility's sequestration requirement and the other~~
5 ~~terms of this contract provision. Compliance with~~
6 ~~the sequestration requirements and offset purchase~~
7 ~~requirements specified in paragraph (3) of this~~
8 ~~subsection (d) shall be reviewed annually by an~~
9 ~~independent expert retained by the owner of the~~
10 ~~initial clean coal facility, with the advance~~
11 ~~written approval of the Attorney General. The~~
12 ~~Commission may, in the course of the review~~
13 ~~specified in item (vii), reduce the allowable~~
14 ~~return on equity for the facility if the facility~~
15 ~~wilfully fails to comply with the carbon capture~~
16 ~~and sequestration requirements set forth in this~~
17 ~~item (v);~~

18 (vi) ~~include limits on, and accordingly~~
19 provide for a reduction ~~modification~~ of, the
20 amount the utility is required to source under the
21 sourcing agreement consistent with paragraph (2)
22 of this subsection (d);

23 ~~(vii) require Commission review: (1) to~~
24 ~~determine the justness, reasonableness, and~~
25 ~~prudence of the inputs to the formula referenced in~~
26 ~~subparagraphs (A) (i) through (A) (iii) of paragraph~~

1 ~~(3) of this subsection (d), prior to an adjustment~~
2 ~~in those inputs including, without limitation, the~~
3 ~~capital structure and return on equity, fuel~~
4 ~~costs, and other operations and maintenance costs~~
5 ~~and (2) to approve the costs to be passed through~~
6 ~~to customers under the sourcing agreement by which~~
7 ~~the utility satisfies its statutory obligations.~~
8 ~~Commission review shall occur no less than every 3~~
9 ~~years, regardless of whether any adjustments have~~
10 ~~been proposed, and shall be completed within 9~~
11 ~~months;~~

12 (vii) ~~(viii)~~ limit the utility's obligation to
13 such amount as the utility is allowed to recover
14 through tariffs filed with the Commission,
15 ~~provided that neither the clean coal facility nor~~
16 ~~the utility waives any right to assert federal~~
17 ~~pre-emption or any other argument in response to a~~
18 ~~purported disallowance of recovery costs;~~

19 (viii) ~~(ix)~~ limit the utility's or alternative
20 retail electric supplier's obligation to incur any
21 liability to only those times ~~until such time as~~
22 the facility is in commercial operation and
23 generating power and energy and such power and
24 energy is being delivered to the facility busbar;

25 (ix) provide that each electric utility shall
26 have the right to determine whether the

1 obligations of the utility party under the
2 sourcing agreement shall be governed by the power
3 purchase provisions or the contract for
4 differences provisions before entering into the
5 sourcing agreements; the provisions of this item
6 (ix) are severable under Section 1.31 of the
7 Statute on Statutes;

8 ~~(x) provide that the owner or owners of the~~
9 ~~initial clean coal facility, which is the~~
10 ~~counterparty to such sourcing agreement, shall~~
11 ~~have the right from time to time to elect whether~~
12 ~~the obligations of the utility party thereto shall~~
13 ~~be governed by the power purchase provisions or the~~
14 ~~contract for differences provisions;~~

15 (x) ~~(xi)~~ append documentation showing that the
16 formula rate and contract, insofar as they relate
17 to the power purchase provisions, have been
18 approved by the Federal Energy Regulatory
19 Commission pursuant to Section 205 of the Federal
20 Power Act;

21 (xi) ~~(xii)~~ provide that any changes to the
22 terms of the contract, insofar as such changes
23 relate to the power purchase provisions, are
24 subject to review under the public interest
25 standard applied by the Federal Energy Regulatory
26 Commission pursuant to Sections 205 and 206 of the

1 Federal Power Act; and

2 (xii) ~~(xiii)~~ conform with customary lender
3 requirements in power purchase agreements used as
4 the basis for financing non-utility generators.

5 (xiii) provide for performance incentives
6 regarding availability, efficiency, and by-product
7 quantities, with premium performance and
8 shortfalls in performance to result in positive
9 and negative adjustments, respectively, to the
10 rate of return approved by the Commission,
11 provided that such rate of return in any year shall
12 not be decreased by more than \$25,000,000 or
13 increased by more than \$12,500,000 as a result of
14 such performance incentives. Such performance
15 incentives shall be structured so that any
16 increases in the rate of return as a result of such
17 performance incentives are designed not to exceed
18 the projected benefits to the buyers resulting
19 from the initial clean coal facility's achievement
20 of that performance incentive;

21 (xiv) include forecasting and scheduling
22 obligations that take account of the requirements
23 of the applicable regional transmission
24 organizations; and

25 (xv) include operating guidelines relating to
26 the operating configuration and dispatch of the

1 initial clean coal facility, which guidelines
2 shall be subject to change from time to time with
3 input from a committee consisting of
4 representatives of the electric utilities and
5 alternative retail electric suppliers that are
6 parties to sourcing agreements with the initial
7 clean coal facility; any actions taken or not taken
8 by the owner of the initial clean coal facility in
9 compliance with such operating guidelines shall be
10 deemed to be prudent, and the prudence of the costs
11 resulting from the action shall be evaluated in
12 light of the fact that the initial clean coal
13 facility is required to comply with such operating
14 guidelines.

15 (4) Effective date of sourcing agreements with the
16 initial clean coal facility. No later than 30 days after
17 the effective date of this amendatory Act of the 97th
18 General Assembly, the initial clean coal facility shall
19 submit a draft sourcing agreement to the Agency and each
20 electric utility required to enter into such agreements
21 pursuant to paragraph (3) of this subsection (d) and the
22 initial clean coal facility and each such electric utility
23 shall promptly and diligently negotiate in good faith over
24 the terms of the sourcing agreement. Within 30 days after
25 receipt of the draft sourcing agreement, each such electric
26 utility shall provide the Agency and the owner of the

1 initial clean coal facility with its comments and
2 recommended revisions to the draft sourcing agreement.
3 Within 15 days after the receipt of the electric utility's
4 comments and recommended revisions, the owner of the
5 initial clean coal facility shall submit its responsive
6 comments and a further revised draft of the sourcing
7 agreement to the Agency. The Agency shall review the draft
8 sourcing agreement and comments and retain an independent,
9 qualified, and experienced mediator to mediate disputes
10 over the draft sourcing agreement's terms. The mediator
11 shall not own or control any direct or indirect interest in
12 the initial clean coal facility and shall have no
13 contractual relationship with the initial clean coal
14 facility. The mediator shall have knowledge of the energy
15 industry.

16 If the parties to the sourcing agreement do not agree
17 on the terms in the sourcing agreement within 15 days after
18 receiving the owner's responsive comments and further
19 revised draft, then the mediator retained by the Agency
20 shall mediate the dispute between the parties. If the
21 parties are in agreement on the terms of the sourcing
22 agreement, then the Agency shall approve the final draft
23 sourcing agreement within 30 days after the parties reach
24 agreement and notify the Commission of that agreement. If,
25 within 30 days after the commencement of mediation, the
26 parties have failed to come to agreement, then the Agency

1 shall, with assistance, as appropriate, from the mediator
2 retained pursuant to this paragraph (4), review and revise
3 the draft sourcing agreement as necessary.

4 The Agency may approve a sourcing agreement only after
5 it finds the sourcing agreement is consistent with the
6 provisions of this Act and contains only terms that are
7 balanced and equitable and fairly protect the interests of
8 the parties to the sourcing agreement, with such approval
9 to occur no later than 60 days after the commencement of
10 the mediation. The Agency shall not withhold or condition
11 its approval of the sourcing agreement based upon least
12 cost resource principles or whether or not it would be
13 prudent for buyers to enter into such an agreement if there
14 were no legal requirement to do so, nor shall the
15 resolution of open issues be based on these principles.

16 If the sourcing agreement is approved, then each
17 electric utility required to enter into a sourcing
18 agreement shall have 30 days after either the Agency's
19 approval or the issuance of any necessary approval by the
20 Federal Energy Regulatory Commission, whichever is later,
21 to enter into the sourcing agreement. The Agency shall
22 submit the approved sourcing agreement to the Commission
23 within 15 days after approval. Each electric utility and
24 the initial clean coal facility shall pay a reasonable fee
25 as required by the Agency for its services under this
26 paragraph (4) and shall pay the mediator's reasonable fees,

1 if any. The Agency shall adopt and make public a policy
2 detailing the process for retaining a mediator under this
3 paragraph (4).

4 Any proposed sourcing agreement with the initial clean
5 coal facility shall not become effective unless a facility
6 cost report and Commission report, as described in this
7 paragraph (4), ~~the following reports~~ are prepared and
8 submitted, whether prepared and submitted before or after
9 the effective date of this amendatory Act of the 97th
10 General Assembly. ~~and authorizations and approvals~~
11 obtained.

12 ~~(i) Facility cost report.~~ The owner of the initial
13 clean coal facility shall submit to the Commission, the
14 Agency, and the General Assembly a front-end engineering
15 and design study, a facility cost report, method of
16 financing (including but not limited to structure and
17 associated costs), and an operating and maintenance cost
18 quote for the facility (collectively "facility cost
19 report"), which shall be prepared in accordance with the
20 requirements of this paragraph (4) of subsection (d) of
21 this Section, and shall provide the Commission and the
22 Agency access to the work papers, relied upon documents,
23 and any other backup documentation related to the facility
24 cost report.

25 ~~(ii) Commission report.~~ Within 6 months following
26 receipt of the facility cost report, the Commission, in

1 consultation with the Agency, shall submit a Commission
2 report to the General Assembly setting forth its analysis
3 of the facility cost report. Such report shall include, but
4 not be limited to, a comparison of the costs associated
5 with electricity generated by the initial clean coal
6 facility to the costs associated with electricity
7 generated by other types of generation facilities, an
8 analysis of the rate impacts on residential and small
9 business customers over the life of the sourcing
10 agreements, and an analysis of the likelihood that the
11 initial clean coal facility will commence commercial
12 operation by and be delivering power to the facility's
13 busbar by 2016. To assist in the preparation of its report,
14 the Commission, in consultation with the Agency, may hire
15 one or more experts or consultants, the costs of which
16 shall be paid for by the owner of the initial clean coal
17 facility. The Commission and Agency may begin the process
18 of selecting such experts or consultants prior to receipt
19 of the facility cost report.

20 ~~(iii) General Assembly approval. The proposed~~
21 ~~sourcing agreements shall not take effect unless,~~
22 ~~based on the facility cost report and the Commission's~~
23 ~~report, the General Assembly enacts authorizing~~
24 ~~legislation approving (A) the projected price, stated~~
25 ~~in cents per kilowatthour, to be charged for~~
26 ~~electricity generated by the initial clean coal~~

1 ~~facility, (B) the projected impact on residential and~~
2 ~~small business customers' bills over the life of the~~
3 ~~sourcing agreements, and (C) the maximum allowable~~
4 ~~return on equity for the project; and~~

5 ~~(iv) Commission review. If the General Assembly~~
6 ~~enacts authorizing legislation pursuant to~~
7 ~~subparagraph (iii) approving a sourcing agreement, the~~
8 ~~Commission shall, within 90 days of such enactment,~~
9 ~~complete a review of such sourcing agreement. During~~
10 ~~such time period, the Commission shall implement any~~
11 ~~directive of the General Assembly, resolve any~~
12 ~~disputes between the parties to the sourcing agreement~~
13 ~~concerning the terms of such agreement, approve the~~
14 ~~form of such agreement, and issue an order finding that~~
15 ~~the sourcing agreement is prudent and reasonable.~~

16 ~~The facility cost report shall be prepared as follows:~~

17 ~~(A)~~ The facility cost report shall be prepared by duly
18 licensed engineering and construction firms detailing the
19 estimated capital costs payable to one or more contractors
20 or suppliers for the engineering, procurement and
21 construction of the components comprising the initial
22 clean coal facility and the estimated costs of operation
23 and maintenance of the facility. The facility cost report
24 shall include:

25 (i) an estimate of the capital cost of the core
26 plant based on one or more front end engineering and

1 design studies for the gasification island and related
2 facilities. The core plant shall include all civil,
3 structural, mechanical, electrical, control, and
4 safety systems; and -

5 (ii) an estimate of the capital cost of the balance
6 of the plant, including any capital costs associated
7 with sequestration of carbon dioxide emissions and all
8 interconnects and interfaces required to operate the
9 facility, such as transmission of electricity,
10 construction or backfeed power supply, pipelines to
11 transport substitute natural gas or carbon dioxide,
12 potable water supply, natural gas supply, water
13 supply, water discharge, landfill, access roads, and
14 coal delivery.

15 In the facility cost report, the ~~The~~ quoted
16 construction costs shall be expressed in nominal dollars as
17 of the date that the quote is prepared and shall include
18 ~~(1)~~ capitalized financing costs during construction, ~~(2)~~
19 taxes, insurance, and other owner's costs, and ~~(3)~~ an
20 assumed escalation in materials and labor beyond the date
21 as of which the construction cost quote is expressed.

22 In the facility cost report, the ~~(B)~~ ~~The~~ front end
23 engineering and design study for the gasification island
24 and the cost study for the balance of plant shall include
25 sufficient design work to permit quantification of major
26 categories of materials, commodities and labor hours, and

1 receipt of quotes from vendors of major equipment required
2 to construct and operate the clean coal facility.

3 ~~(C)~~ The facility cost report shall also include an
4 operating and maintenance cost quote that will provide the
5 estimated cost of delivered fuel, personnel, maintenance
6 contracts, chemicals, catalysts, consumables, spares, and
7 other fixed and variable operations and maintenance costs.

8 ~~(a)~~ The delivered fuel cost estimate will be provided by a
9 recognized third party expert or experts in the fuel and
10 transportation industries. ~~(b)~~ The balance of the
11 operating and maintenance cost quote, excluding delivered
12 fuel costs, will be developed based on the inputs provided
13 by duly licensed engineering and construction firms
14 performing the construction cost quote, potential vendors
15 under long-term service agreements and plant operating
16 agreements, or recognized third party plant operator or
17 operators.

18 The operating and maintenance cost quote (including
19 the cost of the front end engineering and design study)
20 shall be expressed in nominal dollars as of the date that
21 the quote is prepared and shall include ~~(1)~~ taxes,
22 insurance, and other owner's costs, and ~~(2)~~ an assumed
23 escalation in materials and labor beyond the date as of
24 which the operating and maintenance cost quote is
25 expressed.

26 ~~(D)~~ The facility cost report shall also include ~~(i)~~ an

1 analysis of the initial clean coal facility's ability to
2 deliver power and energy into the applicable regional
3 transmission organization markets and ~~(ii)~~ an analysis of
4 the expected capacity factor for the initial clean coal
5 facility.

6 ~~(E)~~ Amounts paid to third parties unrelated to the
7 owner or owners of the initial clean coal facility to
8 prepare the core plant construction cost quote, including
9 the front end engineering and design study, and the
10 operating and maintenance cost quote will be reimbursed
11 through Coal Development Bonds.

12 (5) Re-powering and retrofitting coal-fired power
13 plants previously owned by Illinois utilities to qualify as
14 clean coal facilities. During the 2009 procurement
15 planning process and thereafter, the Agency and the
16 Commission shall consider sourcing agreements covering
17 electricity generated by power plants that were previously
18 owned by Illinois utilities and that have been or will be
19 converted into clean coal facilities, as defined by Section
20 1-10 of this Act. Pursuant to such procurement planning
21 process, the owners of such facilities may propose to the
22 Agency sourcing agreements with utilities and alternative
23 retail electric suppliers required to comply with
24 subsection (d) of this Section and item (5) of subsection
25 (d) of Section 16-115 of the Public Utilities Act, covering
26 electricity generated by such facilities. In the case of

1 sourcing agreements that are power purchase agreements,
2 the contract price for electricity sales shall be
3 established on a cost of service basis. In the case of
4 sourcing agreements that are contracts for differences,
5 the contract price from which the reference price is
6 subtracted shall be established on a cost of service basis.
7 The Agency and the Commission may approve any such utility
8 sourcing agreements that do not exceed cost-based
9 benchmarks developed by the procurement administrator, in
10 consultation with the Commission staff, Agency staff and
11 the procurement monitor, subject to Commission review and
12 approval. The Commission shall have authority to inspect
13 all books and records associated with these clean coal
14 facilities during the term of any such contract.

15 (6) Costs incurred by a utility under this subsection
16 (d) or pursuant to a contract or sourcing agreement entered
17 into under this subsection (d) shall be deemed prudently
18 incurred and reasonable in amount and the electric utility
19 shall be entitled to full cost recovery pursuant to the
20 tariffs filed with the Commission.

21 (e) The draft procurement plans are subject to public
22 comment, as required by Section 16-111.5 of the Public
23 Utilities Act and Section 1-78 of this Act.

24 (f) The Agency shall submit the final procurement plan to
25 the Commission. The Agency shall revise a procurement plan if
26 the Commission determines that it does not meet the standards

1 set forth in Section 16-111.5 of the Public Utilities Act and
2 Section 1-78 of this Act.

3 (g) The Agency shall assess fees to each affected utility
4 to recover the costs incurred in preparation of the annual
5 procurement plan for the utility.

6 (h) The Agency shall assess fees to each bidder to recover
7 the costs incurred in connection with a competitive procurement
8 process.

9 (i) The Agency shall assess fees to the initial clean coal
10 facility to recover the costs incurred in preparation of each
11 procurement plan for the initial clean coal facility.

12 (j) The General Assembly deems it a prudent business
13 practice to develop and promote economic opportunities for
14 minorities, females, and persons with disabilities in the
15 energy production industry.

16 The initial clean coal facility, any clean coal facility,
17 and any clean coal SNG facility shall include in any agreement
18 to sell electric power or SNG entered into pursuant to this Act
19 provisions that require the owner of the facility to make a
20 good faith effort to ensure that an amount equal to not less
21 than 15% of the value of its prime construction contract for
22 the facility shall be established as a goal to be awarded to
23 minority owned businesses, female owned businesses, and
24 businesses owned by a person with a disability; provided that
25 at least 75% of the amount of such total goal shall be for
26 minority owned businesses.

1 "Minority owned business", "female owned business", and
2 "business owned by a person with a disability" shall have the
3 meanings ascribed to them in Section 2 of the Business
4 Enterprise for Minorities, Females, and Persons with
5 Disabilities Act.

6 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;
7 96-159, eff. 8-10-09; 96-1437, eff. 8-17-10.)

8 (20 ILCS 3855/1-76 new)

9 Sec. 1-76. Costs and revenue recoverable by the initial
10 clean coal facility.

11 (a) The price paid for electricity generated by the initial
12 clean coal facility shall be based on a formula rate using a
13 cost of service methodology applicable to wholesale electric
14 power contracts employing a level or deferred capital component
15 and in accordance with the Uniform System of Accounts, subject
16 to and as specifically limited by the provisions set forth in
17 this Section.

18 The formula rate shall determine 3 components of the price
19 under the sourcing agreements: (1) a fuel charge, (2) an
20 electric generation variable charge, and (3) a fixed monthly
21 charge. The fuel charge for any month shall be stated in
22 dollars per month and shall consist of the total actual fuel
23 costs incurred, after taking account of the subtraction of
24 miscellaneous net revenue as provided in subsection (d) of this
25 Section. The electric generation variable charge for any period

1 shall be stated in dollars per MWh and shall consist of all
2 costs incurred by the initial clean coal facility, other than
3 fuel costs, associated with production of electric energy by
4 the initial clean coal facility's power block, which costs vary
5 directly with the level of production of electric energy. The
6 fixed monthly charge shall be stated in dollars per month per
7 MW of nameplate capacity of the initial clean coal facility's
8 power block and shall consist of all costs incurred by the
9 initial clean coal facility that are described in, and as
10 limited by the provisions of, subsections (b), (c), (d), (e),
11 (f), and (g) of this Section, other than the costs incorporated
12 into the calculation of the fuel charge and the electric
13 generation variable charge.

14 No later than 30 days after the approval of the sourcing
15 agreement by the Agency pursuant to paragraph (4) of subsection
16 (d) of Section 1-75 of this Act, the initial clean coal
17 facility shall provide to the Commission projections of its
18 costs for the term of the sourcing agreements. Within 90 days
19 thereafter, the Commission shall, based upon such projections
20 and the provisions of this Section, determine the projected
21 components of the price for each year for the initial clean
22 coal facility. No later than 6 months before the expected
23 commencement of commercial operation of the initial clean coal
24 facility and the commencement of each operating year
25 thereafter, the initial clean coal facility shall submit to the
26 Commission projections of its costs and dispatch levels for the

1 upcoming year. Within 120 days after the receipt of the initial
2 clean coal facility's projections of its costs and dispatch
3 levels for the upcoming year, the Commission shall calculate a
4 fixed monthly charge and an electric generation variable charge
5 for the upcoming year using the inputs to the formula rate
6 under the provisions of this Section. If the Commission does
7 not calculate such components of the price for any year as of
8 the beginning of such year, then the initial clean coal
9 facility shall calculate such components of the price based
10 upon its projections and the provisions of this Section, with
11 any subsequent cost disallowance by the Commission to be
12 reflected through a true-up of costs in the next year. If at
13 any time the Commission, acting in accordance with this
14 Section, disallows any cost, then the amount of such
15 disallowance shall be incorporated as a deduction into the
16 calculation of the fixed monthly charge and the electric
17 generation variable charge, as applicable, for the next year.

18 (b) Capital costs set by the Commission according to this
19 subsection (b) shall be included in the formula rate. "Capital
20 costs" means costs for the purchase of land, buildings,
21 construction, and equipment to be used in the production of
22 electricity, and other costs recorded in the Electric Plant
23 Accounts and other applicable Balance Sheet Accounts of the
24 Uniform System of Accounts for the initial clean coal facility.
25 The Capital Development Board shall calculate a range of
26 capital costs that it believes would be a reasonable cost for

1 the initial clean coal facility. The Capital Development Board
2 shall commence performing its responsibilities under this
3 subsection (b) within 30 days after the effective date of this
4 amendatory Act of the 97th General Assembly. In determining a
5 range of capital costs, the Capital Development Board shall
6 base its evaluation and judgment on professional engineering
7 and regulatory accounting principles and include any cost
8 information and update on costs that may be provided by the
9 initial clean coal facility and shall not employ least cost
10 resource principles. In addition, the Capital Development
11 Board may:

12 (1) include in its consideration the information in a
13 facility cost report, if any, that was prepared and
14 submitted by the initial clean coal facility to the
15 Commission in accordance with paragraph (4) of subsection
16 (d) of Section 1-75 of this Act;

17 (2) consult as much as it deems necessary with the
18 initial clean coal facility;

19 (3) conduct whatever research and investigation it
20 deems necessary; and

21 (4) retain third parties to assist in its
22 determination, provided that such third parties shall not
23 own or control any direct or indirect interest in the
24 initial clean coal facility and shall have no contractual
25 relationship with the initial clean coal facility.

26 The initial clean coal facility shall cooperate with the

1 Capital Development Board in any investigation it deems
2 necessary.

3 The Capital Development Board shall make its final
4 determination of the range of capital costs confidentially and
5 shall submit that range to the Commission in a confidential
6 filing no later than 90 days after the Capital Development
7 Board is required to commence performing its responsibilities
8 under this subsection (b). The initial clean coal facility
9 shall submit to the Commission its estimate of the capital
10 costs to be included in the formula rate. Only after the
11 initial clean coal facility has submitted this estimate shall
12 the Commission publicly announce the range of capital costs
13 submitted by the Capital Development Board. In the event that
14 the estimate submitted by the initial clean coal facility is
15 within or below the range submitted by the Capital Development
16 Board, the initial clean coal facility's estimate shall be
17 approved by the Commission as the amount of pre-approved
18 capital costs.

19 In the event that the estimate submitted by the initial
20 clean coal facility is above the range submitted by the Capital
21 Development Board, the amount of capital costs at the lowest
22 end of the range submitted by the Capital Development Board
23 shall be approved by the Commission as the amount of
24 pre-approved capital costs. "Pre-approved capital costs" means
25 the amount of capital costs that will be included in the
26 formula rate to the extent such costs are actually incurred,

1 with no further review or approval in respect to whether they
2 are prudently incurred. The Commission's determination of
3 pre-approved capital costs shall be made within 15 days after
4 the initial clean coal facility submits its capital cost
5 estimate. The Commission's decision regarding pre-approved
6 capital costs shall be final and shall not be subject to
7 judicial or administrative review.

8 Once made, the Commission's determination of the amount of
9 pre-approved capital costs may not be increased unless the
10 Commission determines that the incremental costs are
11 reasonable, in which case one-third of such reasonable
12 incremental costs shall be included in the formula rate and
13 recoverable by the initial clean coal facility and two-thirds
14 of such costs shall be borne by the initial clean coal facility
15 and its contractors, provided that to the extent such
16 reasonable incremental costs are the result of change in law or
17 non-insurable force majeure, all of such costs shall be
18 included in the formula rate and recoverable by the initial
19 clean coal facility.

20 "Change in law" means any change, including any enactment,
21 repeal, or amendment, in a law, ordinance, rule, regulation,
22 interpretation, permit, license, consent or order, including
23 those relating to taxes or to environmental matters, or in the
24 interpretation or application thereof by any governmental
25 authority occurring after May 31, 2011.

26 "Non-insurable force majeure" means events outside of the

1 reasonable control of the owner of the initial clean coal
2 facility and its contractors, subcontractors, and agents that
3 are not included on a list, to be attached to the sourcing
4 agreement and subject to the procedures set forth in paragraph
5 (4) of subsection (d) of Section 1-75 of this Act, of events
6 that are customarily covered by builder's risk insurance
7 policies for the construction of electric generating plants and
8 other large process plants in the United States. "Non-insurable
9 force majeure" shall not include changes in prices or other
10 changes in market conditions.

11 Any rebates, refunds, or other payments received by the
12 owner of the initial clean coal facility from any of its
13 contractors with respect to the contractor bearing risk for
14 capital cost overruns shall be excluded from miscellaneous net
15 revenue and shall not otherwise reduce the costs of the owner
16 of the initial clean coal facility for purposes of the formula
17 rate. For purposes of this subsection (b), "reasonable" means
18 that the decisions, construction, and supervision of
19 construction by the owner of the initial clean coal facility
20 and its contractors underlying the initial capital cost and
21 significant additions to the initial capital cost of the
22 initial clean coal facility resulted in efficient, economical,
23 and timely construction. In determining the reasonableness of
24 the capital costs of the initial clean coal facility, the
25 Commission shall consider the knowledge and circumstances
26 prevailing at the time of each relevant decision or action of

1 the owner of the initial clean coal facility and its
2 contractors.

3 The Commission may determine that the amount of
4 pre-approved capital costs may be increased only after notice
5 and a hearing. At that hearing, the Capital Development Board
6 shall submit a report recommending whether the incremental
7 costs should be approved in full or in part or rejected. The
8 Commission may approve in whole or in part or reject the
9 incremental capital costs based on whether they are reasonable.

10 At the request of the owner of the initial clean coal facility
11 made not more often than once every 12 months during the
12 construction period of the initial clean coal facility, the
13 Commission shall conduct interim reviews to determine whether
14 capital costs specified in such request and incurred or to be
15 incurred by the owner of the initial clean coal facility, are
16 reasonable.

17 The Capital Development Board shall monitor the
18 construction of the initial clean coal facility for the full
19 duration of construction. The Capital Development Board, in its
20 discretion, may retain third parties to facilitate such
21 monitoring, provided that such third parties shall not own or
22 control any direct or indirect interest in the initial clean
23 coal facility and shall have no contractual relationship with
24 the initial clean coal facility. The initial clean coal
25 facility shall pay a reasonable fee as required by the Capital
26 Development Board for the Capital Development Board's services

1 under this subsection (b), and such fee shall not be passed
2 through to a utility or its customers. If a third party is
3 retained by the Capital Development Board for the determination
4 of a range of capital costs or monitoring of construction, the
5 initial clean coal facility must pay for the third party's
6 reasonable fees, and such costs may not be passed through to a
7 utility or its customers.

8 The provisions of this subsection (b) shall apply to the
9 capital costs for the initial construction of the initial clean
10 coal facility and not to capital costs incurred beyond the
11 initial construction, including costs for replacement of
12 equipment and capital improvements, which capital costs shall
13 be subject to review by the Commission and included in the
14 formula rate to the extent they are determined to be prudently
15 incurred.

16 (c) Operations and maintenance costs set by the Commission
17 according to this subsection (c) shall be included in the
18 formula rate. Operations and maintenance costs mean costs
19 incurred for the administration, supervision, operation,
20 maintenance, preservation, and protection of the initial clean
21 coal facility's physical plant and other costs recorded in the
22 Operation and Maintenance Expense Accounts and other
23 applicable Income Statement Accounts of the Uniform System of
24 Accounts for the initial clean coal facility. The Commission
25 shall assess the prudence of the operations and maintenance
26 costs for the initial clean coal facility and shall allow the

1 initial clean coal facility to include in the formula rate only
2 those costs the Commission deems to be prudent. The Commission
3 may in its discretion retain an expert to assist in its review
4 of operations and maintenance costs. The initial clean coal
5 facility shall pay for the expert's fees if an expert is
6 retained by the Commission, and such costs may not be passed
7 through to a utility or its customers. The Commission's
8 determination regarding the amount of operations and
9 maintenance costs that may be included in the formula rate for
10 each year shall be made in accordance with this Section.

11 (d) Actual fuel costs shall be set by the Agency through a
12 SNG feedstock procurement, pursuant to Section 1-78 of this
13 Act, to be performed at least every 5 years, and purchased by
14 the initial clean coal facility pursuant to a reasonable fuel
15 supply plan, with coal comprising at least 50% of the total
16 feedstock over the term of a sourcing agreement with all coal
17 having high volatile bituminous rank and greater than 1.7
18 pounds of sulfur per million btu content, SNG derived from coal
19 comprising at least 50% of the fuel to generate electricity,
20 SNG derived from biomass comprising up to 10% of the fuel to
21 generate electricity with the approval of the Commission, and
22 natural gas comprising the remainder of the fuel to generate
23 electricity. Actual fuel costs shall consist of all costs
24 associated with the procurement of fuel, including, but not
25 limited to, commodity costs, transportation costs,
26 administrative costs, and costs relating to the procurement

1 process. Actual fuel costs, as so determined, shall be reduced
2 by miscellaneous net revenue received by the owner of the
3 initial clean coal facility, including, but not limited to, net
4 revenue from the sale of emission allowances, if any,
5 substitute natural gas, if any, grants or other support
6 provided by the State of Illinois or the United States
7 Government, firm transmission rights, if any, by-products
8 produced by the facility, any capacity derived from the
9 facility and bid into the capacity markets or otherwise sold
10 and any energy generated as a result of such capacity being
11 called, whether generated from synthesis gas derived from coal,
12 from SNG, or from natural gas, less non-generation variable
13 costs. "Non-generation variable costs" means all costs, other
14 than fuel costs, associated with the production of SNG that is
15 not consumed by the initial clean coal facility's power block,
16 which costs vary directly with the level of production of SNG.
17 Actual fuel costs shall be calculated pursuant to this
18 subsection (d) and included in the formula rate without any
19 determination by the Commission as to prudence.

20 (e) Sequestration costs set by the Commission according to
21 this subsection (e) shall be included in the formula rate.

22 "Sequestration costs" means costs incurred to (1) capture
23 carbon dioxide; (2) compress carbon dioxide; (3) build,
24 operate, and maintain a sequestration site in which carbon
25 dioxide may be injected; (4) build, operate, and maintain a
26 carbon dioxide pipeline, which is owned by the initial clean

1 coal facility; (5) transport the carbon dioxide to a
2 sequestration site or a pipeline; and (6) perform monitoring,
3 verification and other activities associated with carbon
4 capture and sequestration.

5 "Sequestration capital costs" means sequestration costs
6 recorded in the Electric Plant Accounts and other applicable
7 Balance Sheet Accounts of the Uniform System of Accounts for
8 the initial clean coal facility.

9 "Sequestration operations and maintenance costs" means
10 sequestration costs that are recorded in the Operation and
11 Maintenance Expense Accounts and other applicable Income
12 Statement Accounts of the Uniform System of Accounts for the
13 initial clean coal facility and shall include maintenance,
14 monitoring, and verification costs.

15 The Capital Development Board shall calculate an estimate
16 of sequestration capital costs that it believes would be a
17 reasonable cost for the initial clean coal facility's
18 sequestration facilities and an estimate of average annual
19 sequestration operations and maintenance costs that it
20 believes would be a reasonable average annual operation and
21 maintenance cost for the initial clean coal facility's carbon
22 capture and sequestration activities. The Capital Development
23 Board shall commence performing its responsibilities under
24 this subsection (e) within 30 days after the effective date of
25 this amendatory Act of the 97th General Assembly. In
26 determining sequestration capital costs and sequestration

1 operations and maintenance costs, the Capital Development
2 Board shall base its evaluation and judgment on professional
3 engineering and regulatory accounting principles and include
4 any cost information and update on costs that may be provided
5 by the initial clean coal facility and shall not employ least
6 cost resource principles. In addition the Capital Development
7 Board may: (A) include in its consideration cost estimate
8 information in a facility cost report, if any, that was
9 prepared and submitted by the initial clean coal facility to
10 the Commission in accordance with paragraph (4) of subsection
11 (d) of Section 1-75 of this Act; (B) consult as much as it
12 deems necessary with the initial clean coal facility; (C)
13 conduct whatever research and investigation it deems
14 necessary; and (D) retain third parties to assist in its
15 determination, provided that such third parties shall not own
16 or control any direct or indirect interest in the initial clean
17 coal facility and shall have no contractual relationship with
18 the initial clean coal facility. The initial clean coal
19 facility shall cooperate with the Capital Development Board in
20 any investigation it deems necessary.

21 The Capital Development Board shall make its final
22 determination of sequestration capital costs and sequestration
23 operations and maintenance costs and submit such determination
24 to the Commission no later than 90 days after the Capital
25 Development Board is required to commence performing its
26 responsibilities under this subsection (e). The Capital

1 Development Board shall monitor construction of the
2 sequestration facilities in the same manner, and with the same
3 rights to retain an expert and recover the costs thereof, as
4 set forth in subsection (b) of this Section.

5 "Actual sequestration costs" means for any year the sum of:
6 (i) the annual amortized portion of sequestration capital
7 costs, based on level amortization from the later of the date
8 such costs are incurred and the commercial operation date until
9 the end of the term of the sourcing agreements; (ii) the rate
10 of return approved by the Commission pursuant to subsection (f)
11 of this Section applied to sequestration capital costs; and
12 (iii) the sequestration operations and maintenance costs
13 incurred in such year.

14 "Target sequestration costs" means the sum of: (i) the
15 annual amortized portion of the estimated sequestration
16 capital costs determined by the Capital Development Board,
17 based on level amortization from the later of the date such
18 costs are incurred and the commercial operation date until the
19 end of the term of the sourcing agreements; (ii) the rate of
20 return approved by the Commission pursuant to subsection (f) of
21 this Section applied to the estimated sequestration capital
22 costs determined by the Capital Development Board; (iii) the
23 estimate of average annual sequestration operations and
24 maintenance costs determined by the Capital Development Board,
25 escalated in accordance with an escalation factor to be
26 provided in the sourcing agreement from the date of the Capital

1 Development Board's determination to the mid-point of the
2 applicable year; (iv) the sequestration cost underrun, if any,
3 for the immediately preceding year, except to the extent
4 applied to allow recovery of a sequestration cost overrun from
5 a prior year; and (v) any sequestration costs that are the
6 result of a change in law or non-insurable force majeure.

7 "Sequestration cost underrun" means for any year the
8 excess, if any, of target sequestration costs for such year
9 over actual sequestration costs for such year.

10 "Sequestration cost overrun" means for any year the excess,
11 if any, of actual sequestration costs for such year over target
12 sequestration costs for such year.

13 For any year in which there is a sequestration cost
14 underrun, all actual sequestration costs shall be conclusively
15 deemed to be prudent and shall be included in the formula rate
16 with no further review or approval in respect of whether they
17 are prudently incurred. The Commission shall review the costs
18 to ensure they are mathematically correct.

19 For any year in which there is a sequestration cost
20 overrun, the Commission shall determine whether all or a
21 portion of such sequestration cost overrun was prudently
22 incurred, except that the rate of return shall not be subject
23 to review. If the Commission determines that the sequestration
24 cost overrun was prudently incurred, one-third of such
25 sequestration cost overrun shall be included in the formula
26 rate and recoverable by the initial clean coal facility and

1 two-thirds of such sequestration cost overrun shall be borne by
2 the initial clean coal facility and not passed through to a
3 utility, an alternative retail electric supplier, or the
4 customers of a utility unless and until there is a
5 sequestration cost underrun for a subsequent year, in which
6 event the sequestration cost overrun will be included in the
7 formula rate and recoverable by the initial clean coal facility
8 up to the amount of the sequestration cost underrun; provided,
9 however, that if for any year two-thirds of such sequestration
10 cost overrun exceeds the difference of \$20,000,000 minus the
11 amount of penalty, if any, payable by the initial clean coal
12 facility pursuant to Section 1-76.5 with respect to that year,
13 the amount of such excess shall also be included in the formula
14 rate and recoverable by the initial clean coal facility. The
15 detailed procedures for implementing this provision shall be
16 set forth in the sourcing agreements, which procedures shall
17 include a mechanism for equitably adjusting target
18 sequestration costs for any year in which the quantity of
19 carbon dioxide actually captured and sequestered by the initial
20 clean coal facility is greater than the quantity assumed in
21 calculating the estimated costs for such year.

22 "Change in law" means any change, including any enactment,
23 repeal, or amendment, in a law, ordinance, rule, regulation,
24 interpretation, permit, license, consent or order, including
25 those relating to taxes or to environmental matters, or in the
26 interpretation or application thereof by any governmental

1 authority occurring after January 1, 2011.

2 "Non-insurable force majeure" means events outside of the
3 reasonable control of the owner of the initial clean coal
4 facility and its contractors, subcontractors, and agents that
5 are not included on a list, to be attached to the sourcing
6 agreement and subject to the procedures set forth in paragraph
7 (4) of subsection (d) of Section 1-75 of this Act, of events
8 that are customarily covered by builder's risk insurance
9 policies for the construction of electric generating plants and
10 other large process plants in the United States. "Non-insurable
11 force majeure" shall not include changes in prices or other
12 changes in market conditions.

13 (f) The Commission shall determine within 120 days after
14 the effective date of this amendatory Act of the 97th General
15 Assembly or 120 days after the owner of the initial clean coal
16 facility files initial direct testimony regarding rate of
17 return with the Commission, whichever is later, the total rate
18 of return on invested capital for the initial clean coal
19 facility following notice and a public hearing. At the hearing,
20 all interested parties, including utilities, alternative
21 retail electric suppliers, the Attorney General, the Agency,
22 and customers, shall be given an opportunity to be heard. In
23 determining the rate of return, the Commission shall select a
24 sufficient return on investment so as to enable the initial
25 clean coal facility to attract capital in financial markets at
26 competitive rates. The Commission shall consider the rates of

1 return received by developers of facilities similar to the
2 initial clean coal facility inside or outside Illinois, the
3 need to balance an incentive for clean-coal technology with the
4 need to protect Illinois ratepayers from high electricity
5 costs, and any other information the Commission deems relevant.

6 The Agency shall recommend a rate of return to the
7 Commission utilizing the criteria in this subsection (f). The
8 Commission shall further take into account the recommendation
9 of the Agency, but shall not be bound by it. The rate of return
10 shall be no lower than 75 basis points lower than the weighted
11 average authorized total rates of return of the electric
12 utilities in accordance with original cost rate base for their
13 electric distribution assets as of January 1, 2011.
14 Notwithstanding the minimum rate of return established in the
15 preceding sentence, the rate of return shall be no greater than
16 the total rate of return on invested capital that the initial
17 clean coal facility would achieve based on an assumed 55% debt
18 and 45% equity capital structure, with the cost of debt being
19 the actual average cost, including all associated costs and
20 fees, of the initial clean coal facility's debt and the cost of
21 equity being 11.5%. The Commission's determination of the rate
22 of return shall include a mechanism providing for a one-time
23 adjustment at or about the commencement of commercial operation
24 of the initial clean coal facility to adjust for changes in
25 applicable Treasury yield rates between the date of its
26 provisional determination of the rate of return and the dates

1 of construction period borrowing by the initial clean coal
2 facility, which adjustment shall apply to 55% of total capital.

3 The Commission's decision shall be final and not subject to
4 any rehearing or administrative or judicial review. The rate of
5 return determined by the Commission pursuant to this subsection
6 (f) shall apply for the term of the sourcing agreements and
7 shall not be subject to change, except for the one-time
8 adjustment to reflect Treasury yield rate changes as expressly
9 contemplated by this subsection (f) and as otherwise expressly
10 provided in subsection (b) of Section 1-76.5 of this Act.

11 (g) The following shall not be included in determining the
12 formula rate: advertising expenses that do not meet the
13 requirements of Sections 9-225 and 9-226 of the Public
14 Utilities Act, political activity or lobbying expenses as
15 defined by Section 9-224 of the Public Utilities Act, social
16 club dues, or charitable contributions, to the extent, in each
17 case, that a utility would not be permitted to recover such
18 costs.

19 (h) Except as otherwise provided in subsections (b) and (f)
20 of this Section 1-76, within 30 days after a decision of the
21 Commission on recoverable costs under this Section, any
22 interested party to the Commission's decision may apply for a
23 rehearing with respect to the decision. The Commission shall
24 receive and consider such application for rehearing and shall
25 grant or deny the application in whole or in part within 20
26 days from the date of the receipt thereof by the Commission. If

1 no rehearing is applied for within the required 30 days or an
2 application for rehearing is denied, the Commission decision
3 shall be final.

4 If an application for rehearing is granted, the Commission
5 shall hold a rehearing within 30 days after granting the
6 application. The decision of the Commission upon rehearing
7 shall be final. Except as otherwise provided in subsections (b)
8 and (f) of this Section 1-76, any person affected by a decision
9 of the Commission under this Section 1-76 may have the decision
10 reviewed only under and in accordance with the Administrative
11 Review Law. Except as otherwise provided in subsections (b) and
12 (f) of this Section 1-76, the provisions of the Administrative
13 Review Law, all amendments modifications thereof and the rules
14 adopted pursuant thereto, shall apply to and govern all
15 proceedings for the judicial review of final administrative
16 decisions of the Commission under this subsection (h). The term
17 "administrative decision" is defined as in Section 3-101 of the
18 Code of Civil Procedure.

19 (i) The Capital Development Board shall adopt and make
20 public a policy detailing the process for retaining third
21 parties under this Section. Any third parties retained to
22 assist with calculating the capital costs or sequestration
23 costs shall be retained no later than 45 days after the
24 effective date of this amendatory Act of the 97th General
25 Assembly.

1 (20 ILCS 3855/1-76.5 new)

2 Sec. 1-76.5. Capture and sequestration requirements for
3 initial clean coal facility.

4 (a) The initial clean coal facility shall provide
5 documentation to the Commission each year of commercial
6 operation accurately reporting the quantity of carbon
7 emissions from the facility that have been captured and
8 sequestered and report any quantities of carbon released from
9 the site or sites at which carbon emissions were sequestered in
10 prior years, based on continuous monitoring of such sites. If,
11 in any year, the owner of the facility fails to demonstrate
12 that (1) the portion of the facility that produces SNG captured
13 and sequestered at least 90% of the carbon dioxide it would
14 otherwise emit and (2) the initial clean coal facility as a
15 whole captured and sequestered at least 50% of the total carbon
16 emissions that the facility would otherwise emit or if the
17 sequestration of emissions from prior years has failed,
18 resulting in the release of carbon dioxide into the atmosphere,
19 or both, then the owner of the initial clean coal facility must
20 pay a penalty of \$20,000,000, which shall be deposited into the
21 Energy Efficiency Trust Fund and distributed pursuant to
22 subsection (b) of Section 6-6 of the Renewable Energy, Energy
23 Efficiency, and Coal Resources Development Law of 1997.

24 If during the first 12 months of commercial operation of
25 the initial clean coal facility, there are more than 4 stops
26 and starts of the portion of the facility that produces SNG,

1 with each stop and start of an individual unit constituting one
2 stop and start, then the calculation of the quantities
3 described in this subsection (a) shall not take into account
4 any carbon dioxide emissions from the portion of the facility
5 that produces SNG occurring during the stop and start-up
6 periods, including related periods of non-steady state
7 operation, associated with such excess stops and starts. The
8 penalty resulting from the failure to capture and sequester at
9 least the minimum amount of carbon dioxide shall not be passed
10 through to a utility, an alternative retail electric supplier,
11 or the customers of a utility. The initial clean coal facility
12 shall not forfeit its designation as a clean coal facility if
13 the facility fails to fully comply with the applicable carbon
14 sequestration requirements in any given year, provided the
15 requisite penalties are complied with.

16 (b) In addition to any penalty for the initial clean coal
17 facility's failure to capture and sequester at least its
18 minimum sequestration requirement, the Attorney General, on
19 behalf of the People of the State of Illinois, shall
20 specifically enforce the facility's sequestration requirement
21 and the other terms of this contract provision. Such action may
22 be filed in any circuit court in Illinois. By entering into a
23 sourcing agreement pursuant to subsection (d) of Section 1-75
24 of this Act, the initial clean coal facility agrees to waive
25 any objections to venue or to the jurisdiction of the court
26 with regard to the Attorney General's action for specific

1 performance under this Section. The Commission may reduce the
2 recoverable rate of return approved pursuant to Section 1-76 of
3 this Act for the facility if the facility willfully fails to
4 comply with the carbon capture and sequestration requirements
5 set forth in this Section.

6 (c) Compliance with the capture and sequestration
7 requirements of this Section shall be assessed annually by the
8 Commission, which may in its discretion retain an expert to
9 facilitate its assessment. The initial clean coal facility
10 shall pay for the expert's reasonable fees if an expert is
11 retained by the Commission, and such costs shall not be passed
12 through to a utility, an alternative retail electric supplier,
13 or the customers of a utility. The Commission shall adopt and
14 make public a policy detailing the process for retaining an
15 expert under this Section.

16 (d) Responsibility for compliance with the capture and
17 sequestration requirements specified in this Section for the
18 initial clean coal facility shall reside solely with the
19 initial clean coal facility regardless of whether the facility
20 has contracted with another party to capture, transport, or
21 sequester carbon dioxide.

22 (20 ILCS 3855/1-77 new)

23 Sec. 1-77. Sequestration permitting, oversight, and
24 investigations.

25 (a) No clean coal facility, initial clean coal facility, or

1 clean coal SNG facility may transport or sequester carbon
2 dioxide unless the Commission approves the method of carbon
3 dioxide transportation or sequestration as provided in this
4 Section. Approval shall be required regardless of whether the
5 facility has contracted with another party to transport or
6 sequester the carbon dioxide. Nothing in this subsection (a)
7 shall release the owner or operator of a carbon dioxide
8 sequestration site or carbon dioxide pipeline from any other
9 permitting requirements under applicable State and federal
10 laws, statutes, rules, or regulations.

11 (b) No later than 3 months prior to the date upon which the
12 company intends to commence construction of the facility, the
13 owner of the facility shall file with the Commission a carbon
14 dioxide transportation or sequestration plan. The Commission
15 shall review proposed carbon dioxide transportation and
16 sequestration methods and shall approve those methods it deems
17 reasonable and cost-effective. For purposes of this review,
18 "cost-effective" means a commercially reasonable price for
19 similar carbon dioxide transportation or sequestration
20 techniques. In determining whether sequestration through
21 injection is reasonable and cost-effective, the Commission may
22 consult with the Illinois State Geological Survey.

23 The Commission shall hold a public hearing within 30 days
24 after receipt of the facility's carbon dioxide transportation
25 or sequestration plan. The Commission shall post notice of the
26 review on its website upon submission of a carbon dioxide

1 transportation or sequestration method and shall accept
2 written public comments. The Commission shall take the comments
3 into account when making its decision. However, the Commission
4 shall not approve a carbon dioxide sequestration method if the
5 owner or operator of the sequestration site has not received
6 (1) an Underground Injection Control permit from the Illinois
7 Environmental Protection Agency or the United States
8 Environmental Protection Agency pursuant to the Environmental
9 Protection Act, (2) an Underground Injection Control permit
10 from the Illinois Department of Natural Resources pursuant to
11 the Illinois Oil and Gas Act, or (3) any applicable permit from
12 the state in which the sequestration site is located if the
13 sequestration shall take place outside of Illinois. The
14 Commission shall approve or deny the carbon dioxide
15 transportation or sequestration method within 90 days after the
16 receipt of all required information.

17 (c) At least annually, the Illinois Environmental
18 Protection Agency shall inspect all carbon dioxide
19 sequestration sites in Illinois to ensure the safety and
20 feasibility of those sequestration sites. However, the
21 Illinois Environmental Protection Agency may, as often as
22 deemed necessary, monitor and conduct investigations of those
23 sites. The owner or operator of the sequestration site must
24 cooperate with the Illinois Environmental Protection Agency
25 investigations of carbon dioxide sequestration sites. If the
26 Illinois Environmental Protection Agency determines at any

1 time a site creates conditions that warrant the issuance of a
2 seal order under Section 34 of the Environmental Protection
3 Act, then the Illinois Environmental Protection Agency shall
4 seal the site pursuant to the Environmental Protection Act. If
5 the Illinois Environmental Protection Agency determines at any
6 time a carbon dioxide sequestration site creates conditions
7 that warrant the institution of a civil action for an
8 injunction under Section 43 of the Environmental Protection
9 Act, then the Illinois Environmental Protection Agency shall
10 request the State's Attorney or the Attorney General institute
11 such action. The Illinois Environmental Protection Agency
12 shall provide notice of any such actions as soon as possible on
13 its website.

14 (d) At least annually, the Commission shall inspect all
15 carbon dioxide pipelines in Illinois that transport carbon
16 dioxide to ensure the safety and feasibility of those
17 pipelines. However, the Commission may, as often as deemed
18 necessary, monitor and conduct investigations of those
19 pipelines. The owner or operator of the pipeline must cooperate
20 with the Commission investigations of the carbon dioxide
21 pipelines. If the Commission determines at any time that a
22 carbon dioxide pipeline creates conditions that warrant the
23 issuance of a seal order under Section 34 of the Environmental
24 Protection Act, then the Commission shall notify the Illinois
25 Environmental Protection Agency of such conditions. In
26 circumstances in which the carbon dioxide pipeline creates a

1 substantial danger to the environment or public health or to
2 the welfare of persons when the danger is to the livelihood of
3 those persons, the State's Attorney or Attorney General may,
4 upon the request of the Commission or on his or her own motion,
5 institute a civil action for an immediate injunction to halt
6 any discharge or other activity causing or contributing to the
7 danger or require any other action as may be necessary. The
8 Court may issue an ex parte order and shall schedule a hearing
9 on the matter no later than 3 business days after the date of
10 the injunction. The Commission shall provide notice of any such
11 actions as soon as possible on its website.

12 (20 ILCS 3855/1-78 new)

13 Sec. 1-78. Feedstock procurement.

14 (a) A feedstock procurement plan shall, every 5 years, or
15 more frequently with respect to feedstock that cannot
16 reasonably be procured for a 5-year period on acceptable terms,
17 be prepared for the initial clean coal facility based on the
18 initial clean coal facility's projection of feedstock usage and
19 ratios, and consistent with the applicable requirements of this
20 Act. The plan shall specifically identify the feedstock
21 products to be procured following plan approval and shall
22 follow all the requirements set forth in this Act and all
23 applicable State and federal laws, statutes, rules, or
24 regulations, as well as Commission orders. Nothing in this
25 Section precludes consideration of contracts longer than 5

1 years and related forecast data. Any feedstock procurement
2 occurring in accordance with this plan shall be competitively
3 bid through a request for proposals process. Approval and
4 implementation of the feedstock procurement plan shall be
5 subject to review and approval by the Commission according to
6 the provisions set forth in this Section. A feedstock
7 procurement plan shall include each of the following
8 components:

9 (1) Daily load analysis. This analysis shall include:

10 (A) multi-year historical analysis of hourly
11 loads; and

12 (B) known or projected changes to future loads.

13 (2) Determination of the fuel specifications required
14 for the initial clean coal facility, including:

15 (A) feedstock mix, as set by the initial clean coal
16 facility with coal having high volatile bituminous
17 rank and greater than 1.7 pounds of sulfur per million
18 btu content and comprising at least 50% of the total
19 feedstock over the term of the sourcing agreement;

20 (B) volume of each feedstock required;

21 (C) quality standards of each feedstock;

22 (D) transportation and delivery requirements and
23 associated costs and impacts on the performance,
24 availability, and reliability of the initial clean
25 coal facility;

26 (E) technical specifications of the initial clean

1 coal facility for its feedstocks; and

2 (F) appropriate testing of any proposed feedstock
3 before it is incorporated into the feedstock
4 procurement plan or process to determine the effect of
5 such feedstock on the performance, availability, and
6 reliability of the initial clean coal facility.

7 (b) The feedstock procurement process shall be
8 administered by a feedstock procurement administrator and
9 monitored by a feedstock procurement monitor.

10 (1) The feedstock procurement administrator shall:

11 (A) design the final feedstock procurement process
12 in accordance with subsection (d) of this Section
13 following Commission approval of the feedstock
14 procurement plan;

15 (B) develop feedstock benchmarks in accordance
16 with paragraph (3) of subsection (d) of this Section to
17 be used to evaluate bids; these benchmarks shall be
18 submitted to the Commission for review and approval on
19 a confidential basis prior to the feedstock
20 procurement event;

21 (C) serve as the interface between the initial
22 clean coal facility and feedstock suppliers regarding
23 bidding and contract negotiations;

24 (D) manage the bidder pre-qualification and
25 registration process;

26 (E) obtain the initial clean coal facility's

1 agreement to the final form of all supply contracts and
2 credit collateral agreements;

3 (F) administer the request for feedstock proposals
4 process;

5 (G) have the discretion to negotiate to determine
6 whether bidders are willing to lower the price of bids
7 that meet the benchmarks approved by the Commission;
8 any post-bid negotiations with bidders shall be
9 limited to price only and shall be completed within 24
10 hours after opening the sealed bids and shall be
11 conducted in a fair and unbiased manner; in conducting
12 the negotiations, there shall be no disclosure of any
13 information derived from proposals submitted by
14 competing bidders; if information is disclosed to any
15 bidder, it shall be provided to all competing bidders;

16 (H) maintain confidentiality of supplier and
17 bidding information in a manner consistent with all
18 applicable laws, rules, regulations, and tariffs;

19 (I) submit a confidential report to the Commission
20 recommending acceptance or rejection of bids;

21 (J) notify the facility of contract counterparties
22 and contract specifics; and

23 (K) administer related contingency feedstock
24 procurement events.

25 (2) The feedstock procurement monitor, who shall be
26 retained by the Commission, shall:

1 (A) monitor interactions among the feedstock
2 procurement administrator, suppliers, and the initial
3 clean coal facility;

4 (B) monitor and report to the Commission on the
5 progress of the feedstock procurement process;

6 (C) provide an independent confidential report to
7 the Commission regarding the results of the feedstock
8 procurement event;

9 (D) preserve the confidentiality of supplier and
10 bidding information in a manner consistent with all
11 applicable laws, rules, regulations, and tariffs;

12 (E) provide expert advice to the Commission and
13 consult with the feedstock procurement administrator
14 regarding issues related to feedstock procurement
15 process design, rules, protocols, and policy-related
16 matters;

17 (F) consult with the feedstock procurement
18 administrator regarding the development and use of
19 benchmark criteria, standard form contracts, credit
20 policies, and bid documents; and

21 (G) assess compliance with the procurement plans
22 approved by the Commission.

23 (c) The feedstock procurement process shall be conducted as
24 follows:

25 (1) Beginning in 2012, the initial clean coal facility
26 shall annually provide a range of feedstock requirement

1 forecasts to the Agency by July 15 of each year, or such
2 other date as may be required by the Commission or Agency.
3 The feedstock requirement forecasts shall cover the 5-year
4 feedstock procurement planning period for the next
5 feedstock procurement plan, or such other longer period
6 that the Agency or the Commission may require, and shall
7 include daily data representing a high generation, low
8 generation and expected generation scenario for the
9 initial clean coal facility. The initial clean coal
10 facility shall provide supporting data and assumptions for
11 each of the scenarios.

12 (2) Beginning in 2012, the Agency shall at least every
13 5 years prepare a feedstock procurement plan by August 15th
14 of the applicable year, or such other date as may be
15 required by the Commission. The feedstock procurement plan
16 shall identify the portfolio of feedstocks to be procured.
17 Copies of the feedstock procurement plan shall be posted
18 and made publicly available on the Agency's and
19 Commission's websites, and copies shall also be provided to
20 the initial clean coal facility. The initial clean coal
21 facility shall have 30 days following the date of posting
22 to provide comment to the Agency on the feedstock
23 procurement plan. Other interested entities also may
24 comment on the feedstock procurement plan. All comments
25 submitted to the Agency shall be specific, supported by
26 data or other detailed analyses, and, if objecting to all

1 or a portion of the feedstock procurement plan, accompanied
2 by specific alternative wording or proposals. All comments
3 shall be posted on the Agency's and Commission's websites.
4 During this 30-day comment period, the Agency shall hold at
5 least one public hearing for the purpose of receiving
6 public comment on the procurement plan. Within 14 days
7 following the end of the 30-day review period, the Agency
8 shall revise the feedstock procurement plan as necessary
9 based on the comments received, file the feedstock
10 procurement plan with the Commission, and post the
11 feedstock procurement plan on the websites.

12 (3) Within 5 days after the filing of the feedstock
13 procurement plan, any person objecting to the feedstock
14 procurement plan shall file an objection with the
15 Commission. Within 10 days after the filing, the Commission
16 shall determine whether a hearing is necessary. The
17 Commission shall enter its order confirming or modifying
18 the feedstock procurement plan within 90 days after the
19 filing of the feedstock procurement plan by the Agency.

20 (4) The Commission shall approve the feedstock
21 procurement plan, including expressly the forecast used in
22 the feedstock procurement plan, if the Commission
23 determines that it shall ensure adequate, reliable,
24 affordable, and environmentally sustainable feedstocks to
25 the clean coal facility at the lowest total cost over time,
26 taking into account any benefits of price stability and

1 other criteria set forth in this Section.

2 (d) The feedstock procurement process shall include each of
3 the following components:

4 (1) Solicitation, pre-qualification, and registration
5 of bidders. The feedstock procurement administrator shall
6 disseminate information to potential bidders to promote a
7 feedstock procurement event, notify potential bidders that
8 the feedstock procurement administrator may enter into a
9 post-bid price negotiation with bidders that meet the
10 applicable benchmarks, provide supply requirements, and
11 otherwise explain the competitive feedstock procurement
12 process. In addition to such other publication as the
13 feedstock procurement administrator determines is
14 appropriate, this information shall be posted on the
15 Agency's and the Commission's websites. The feedstock
16 procurement administrator shall also administer the
17 prequalification process, including evaluation of
18 creditworthiness, compliance with feedstock procurement
19 rules, and agreement to the standard form contract
20 developed pursuant to paragraph (2) of this subsection (d).
21 The feedstock procurement administrator shall then
22 identify and register bidders to participate in the
23 feedstock procurement event.

24 (2) Standard contract forms and credit terms and
25 instruments. The feedstock procurement administrator, in
26 consultation with the initial clean coal facility,

1 electric utilities, alternative retail electric suppliers,
2 the Commission, and other interested parties and subject to
3 Commission oversight, shall develop and provide standard
4 contract forms for the supplier contracts that meet
5 generally accepted industry practices. Standard credit
6 terms and instruments that meet generally accepted
7 industry practices shall be similarly developed. The
8 feedstock procurement administrator shall make available
9 to the Commission all written comments it receives on the
10 contract forms, credit terms, or instruments. If the
11 feedstock procurement administrator cannot reach agreement
12 with the initial clean coal facility as to the contract
13 terms and conditions, then the feedstock procurement
14 administrator must notify the Commission of any disputed
15 terms and the Commission shall resolve the dispute. The
16 terms of the contracts shall not be subject to negotiation
17 by winning bidders, and the bidders must agree to the terms
18 of the contract in advance so that winning bids are
19 selected solely on the basis of price.

20 (3) Establishment of a market-based price benchmark.
21 As part of the development of the feedstock procurement
22 process, the feedstock procurement administrator, in
23 consultation with the Commission staff, Agency staff, and
24 the feedstock procurement monitor, shall establish
25 benchmarks for evaluating the final prices in the contracts
26 for each of the feedstocks that shall be procured through

1 the feedstock procurement process. The benchmarks shall be
2 based on price data for similar feedstocks for the same
3 delivery period and similar delivery points, or other
4 delivery points after adjusting for that difference. The
5 price benchmarks may also be adjusted to take into account
6 differences between the information reflected in the
7 underlying data sources and the specific feedstocks and
8 gasification feedstock procurement process being used to
9 procure for the initial clean coal facility. The benchmarks
10 shall be confidential but shall be provided to the
11 Commission, and shall be subject to Commission review and
12 approval, prior to a feedstock procurement event.

13 (4) Request for proposals. The feedstock procurement
14 administrator shall design and issue a request for
15 proposals to supply coal or natural gas in accordance with
16 the initial clean coal facility's usage plan, as approved
17 by the Commission. The request for proposals shall set
18 forth a procedure for sealed, binding commitment bidding
19 with pay-as-bid settlement, and provision for selection of
20 bids on the basis of price.

21 (5) A plan for implementing contingencies in the event
22 of supplier default or failure of the feedstock procurement
23 process to fully meet the expected load requirement due to
24 insufficient supplier participation, Commission rejection
25 of results, or any other cause. The plan must be specific
26 to the initial clean coal facility's feedstock

1 specifications and requirements.

2 The feedstock procurement process described in this
3 subsection (d) is exempt from the requirements of the Illinois
4 Procurement Code pursuant to Section 20-10 of the Illinois
5 Procurement Code.

6 (e) Within 2 business days after opening the sealed bids,
7 the feedstock procurement administrator shall submit a
8 confidential report to the Commission. The report shall contain
9 the results of the bidding for each of the feedstock types
10 along with the feedstock procurement administrator's
11 recommendation for the acceptance and rejection of bids based
12 on the price benchmark criteria and other factors observed in
13 the process. The feedstock procurement monitor also shall
14 submit a confidential report to the Commission within 2
15 business days after opening the sealed bids. The report shall
16 contain the feedstock procurement monitor's assessment of
17 bidder behavior in the process, as well as an assessment of the
18 feedstock procurement administrator's compliance with the
19 feedstock procurement process and rules. The Commission shall
20 review the confidential reports submitted by the feedstock
21 procurement administrator and feedstock procurement monitor
22 and shall accept or reject the recommendations of the feedstock
23 procurement administrator within 2 business days after receipt
24 of the reports.

25 (f) Within 3 business days after the Commission decision
26 approving the results of a feedstock procurement event, the

1 initial clean coal facility shall enter into binding
2 contractual arrangements with the winning suppliers using
3 standard form contracts.

4 (g) The names of the successful bidders and the amount of
5 feedstock to be delivered for each contract type and for each
6 contract term shall be made available to the public at the time
7 of Commission approval of a feedstock procurement event. The
8 Commission, the procurement monitor, the feedstock procurement
9 administrator, the Agency, and all participants in the
10 feedstock procurement process shall maintain the
11 confidentiality of all other supplier and bidding information
12 in a manner consistent with all applicable laws, rules,
13 regulations, and tariffs. Confidential information, including
14 the confidential reports submitted by the feedstock
15 procurement administrator and feedstock procurement monitor
16 pursuant to subsection (e) of this Section, shall not be made
17 publicly available and shall not be discoverable by any party
18 in any proceeding, absent a compelling demonstration of need,
19 nor shall those reports be admissible in any proceeding other
20 than one for law enforcement purposes.

21 (h) Within 2 business days after a Commission decision
22 approving the results of a feedstock procurement event or such
23 other date as may be required by the Commission from time to
24 time, the initial clean coal facility shall file for
25 informational purposes with the Commission its actual or
26 estimated feedstock costs reflecting the costs associated with

1 the feedstock procurement.

2 (i) The initial clean coal facility shall pay for
3 reasonable costs incurred by the Agency in administering the
4 feedstock procurement events. The Agency shall determine the
5 amount owed for each feedstock procurement event, and the
6 initial clean coal facility shall pay that amount to the Agency
7 within 30 days after being informed by the Agency of the amount
8 owed. Those funds shall be deposited into the Agency Operations
9 Fund, pursuant to Section 1-55 of this Act, to be used to
10 reimburse expenses related to the feedstock procurement.

11 (j) The Commission has the authority to adopt rules to
12 carry out the provisions of this Section. For the public
13 interest, safety, and welfare, the Commission also has the
14 authority to adopt rules to carry out the provisions of this
15 Section on an emergency basis.

16 (k) On or before April 1 of each year, the Commission may,
17 hold an informal hearing for the purpose of receiving comments
18 on the prior year's feedstock procurement process and any
19 recommendations for change.

20 (l) For all purposes of this Section 1-78 and subsection
21 (a-1) of Section 1-75 of this Act, (i) feedstock procurement
22 shall be deemed to include transportation of the feedstock
23 products to the initial clean coal facility (including the
24 acquisition by the initial clean coal facility, as appropriate,
25 of trucks, railcars or other transportation equipment), (ii)
26 feedstock procurement shall not be deemed to include day-to-day

1 performance and administration of feedstock procurement and
2 transportation arrangements, including scheduling, weighing,
3 quality determination, acceptance or rejection of shipments,
4 price adjustments, documentation and related activities, all
5 of which shall be performed by the owner of the initial clean
6 coal facility, and (iii) feedstock supplier shall be deemed to
7 include feedstock transporters and providers of feedstock
8 transportation equipment.

9 (20 ILCS 3855/1-79 new)

10 Sec. 1-79. Limited non-impairment.

11 (a) The State of Illinois pledges that the State shall not
12 enact any law or take any action to:

13 (1) break, or repeal the authority for, sourcing
14 agreements in a form approved by the Agency and entered
15 into between electric utilities and the initial clean coal
16 facility pursuant to subsection (d) of Section 1-75 of this
17 Act;

18 (2) break, or repeal the authority for, sourcing
19 agreements in a form approved by the Agency and entered
20 into between alternative retail electric suppliers and the
21 initial clean coal facility;

22 (3) deny public utilities full cost recovery for their
23 costs incurred under those sourcing agreements;

24 (4) deny the initial clean coal facility full cost
25 recovery under those sourcing agreements for costs that are

1 recoverable under Section 1-76 of this Act.

2 (5) repeal or remove the requirement that electric
3 utilities shall enter into sourcing agreements with the
4 initial clean coal facility under paragraph (3) of
5 subsection (d) of Section 1-75 of this Act or subsection
6 (c) of Section 16-116 of the Public Utilities Act; or

7 (6) repeal or remove the requirement that alternative
8 retail electric suppliers shall enter into sourcing
9 agreements with the initial clean coal facility under item
10 (iv) of paragraph (5) of subsection (d) of Section 16-115
11 of the Public Utilities Act.

12 These pledges are for the benefit of the parties to those
13 sourcing agreements and the issuers and holders of bonds or
14 other obligations issued or incurred to finance or refinance
15 the initial clean coal facility. The initial clean coal
16 facility is authorized to include and refer to these pledges in
17 any financing agreement into which it may enter in regard to
18 those sourcing agreements.

19 (b) The State of Illinois retains and reserves all other
20 rights to enact new or amendatory legislation or take any other
21 action, without impairment of the right of the initial clean
22 coal facility to recover prudently incurred costs resulting
23 from the new or amendatory legislation or other action as
24 approved by the Commission, including, but not limited to,
25 legislation or other action that would: (1) directly or
26 indirectly raise the costs that clean coal facilities must

1 incur; (2) directly or indirectly place additional
2 restrictions, regulations, or requirements on the initial
3 clean coal facility; (3) prohibit sequestration in general or
4 prohibit a specific sequestration method or project; or (4)
5 increase minimum sequestration requirements for the initial
6 clean coal facility to a technically feasible extent.

7 Section 10. The Illinois Procurement Code is amended by
8 changing Sections 1-10 and 20-10 as follows:

9 (30 ILCS 500/1-10)

10 Sec. 1-10. Application.

11 (a) This Code applies only to procurements for which
12 contractors were first solicited on or after July 1, 1998. This
13 Code shall not be construed to affect or impair any contract,
14 or any provision of a contract, entered into based on a
15 solicitation prior to the implementation date of this Code as
16 described in Article 99, including but not limited to any
17 covenant entered into with respect to any revenue bonds or
18 similar instruments. All procurements for which contracts are
19 solicited between the effective date of Articles 50 and 99 and
20 July 1, 1998 shall be substantially in accordance with this
21 Code and its intent.

22 (b) This Code shall apply regardless of the source of the
23 funds with which the contracts are paid, including federal
24 assistance moneys. This Code shall not apply to:

1 (1) Contracts between the State and its political
2 subdivisions or other governments, or between State
3 governmental bodies except as specifically provided in
4 this Code.

5 (2) Grants, except for the filing requirements of
6 Section 20-80.

7 (3) Purchase of care.

8 (4) Hiring of an individual as employee and not as an
9 independent contractor, whether pursuant to an employment
10 code or policy or by contract directly with that
11 individual.

12 (5) Collective bargaining contracts.

13 (6) Purchase of real estate, except that notice of this
14 type of contract with a value of more than \$25,000 must be
15 published in the Procurement Bulletin within 7 days after
16 the deed is recorded in the county of jurisdiction. The
17 notice shall identify the real estate purchased, the names
18 of all parties to the contract, the value of the contract,
19 and the effective date of the contract.

20 (7) Contracts necessary to prepare for anticipated
21 litigation, enforcement actions, or investigations,
22 provided that the chief legal counsel to the Governor shall
23 give his or her prior approval when the procuring agency is
24 one subject to the jurisdiction of the Governor, and
25 provided that the chief legal counsel of any other
26 procuring entity subject to this Code shall give his or her

1 prior approval when the procuring entity is not one subject
2 to the jurisdiction of the Governor.

3 (8) Contracts for services to Northern Illinois
4 University by a person, acting as an independent
5 contractor, who is qualified by education, experience, and
6 technical ability and is selected by negotiation for the
7 purpose of providing non-credit educational service
8 activities or products by means of specialized programs
9 offered by the university.

10 (9) Procurement expenditures by the Illinois
11 Conservation Foundation when only private funds are used.

12 (10) Procurement expenditures by the Illinois Health
13 Information Exchange Authority involving private funds
14 from the Health Information Exchange Fund. "Private funds"
15 means gifts, donations, and private grants.

16 (c) This Code does not apply to the electric power
17 procurement process provided for under Section 1-75 of the
18 Illinois Power Agency Act and Section 16-111.5 of the Public
19 Utilities Act.

20 (d) Except for Section 20-160 and Article 50 of this Code,
21 and as expressly required by Section 9.1 of the Illinois
22 Lottery Law, the provisions of this Code do not apply to the
23 procurement process provided for under Section 9.1 of the
24 Illinois Lottery Law.

25 (e) This Code does not apply to the process used by the
26 Capital Development Board to retain a person or entity to

1 assist the Capital Development Board with its duties related to
2 the determination of costs of an initial clean coal facility,
3 as defined under Section 1-10 of the Illinois Power Agency Act,
4 as required under Section 1-76 of the Illinois Power Agency
5 Act, including calculating the range of capital costs or the
6 sequestration costs or monitoring the construction of initial
7 clean coal facility for the full duration of construction.

8 (f) This Code does not apply to the process used by the
9 Illinois Power Agency to retain a mediator to mediate sourcing
10 agreement disputes between electric utilities or alternative
11 retail electric suppliers and the initial clean coal facility,
12 as defined under Section 1-10 of the Illinois Power Agency Act,
13 as required under paragraph (4) of subsection (d) of Section
14 1-75 of the Illinois Power Agency Act. This Code does not apply
15 to the process used by the Illinois Commerce Commission to
16 retain an expert to assist the Commission with its duties
17 related to the determination of the costs of an initial clean
18 coal facility, as defined under Section 1-10 of the Illinois
19 Power Agency Act, as required under Section 1-76 of the
20 Illinois Power Agency Act, including determining the initial
21 clean coal facility's operations and maintenance costs, or
22 compliance with capture and sequestration requirements.

23 (Source: P.A. 95-481, eff. 8-28-07; 95-615, eff. 9-11-07;
24 95-876, eff. 8-21-08; 96-840, eff. 12-23-09; 96-1331, eff.
25 7-27-10.)

1 (30 ILCS 500/20-10)

2 (Text of Section from P.A. 96-159 and 96-588)

3 Sec. 20-10. Competitive sealed bidding; reverse auction.

4 (a) Conditions for use. All contracts shall be awarded by
5 competitive sealed bidding except as otherwise provided in
6 Section 20-5.

7 (b) Invitation for bids. An invitation for bids shall be
8 issued and shall include a purchase description and the
9 material contractual terms and conditions applicable to the
10 procurement.

11 (c) Public notice. Public notice of the invitation for bids
12 shall be published in the Illinois Procurement Bulletin at
13 least 14 days before the date set in the invitation for the
14 opening of bids.

15 (d) Bid opening. Bids shall be opened publicly in the
16 presence of one or more witnesses at the time and place
17 designated in the invitation for bids. The name of each bidder,
18 the amount of each bid, and other relevant information as may
19 be specified by rule shall be recorded. After the award of the
20 contract, the winning bid and the record of each unsuccessful
21 bid shall be open to public inspection.

22 (e) Bid acceptance and bid evaluation. Bids shall be
23 unconditionally accepted without alteration or correction,
24 except as authorized in this Code. Bids shall be evaluated
25 based on the requirements set forth in the invitation for bids,
26 which may include criteria to determine acceptability such as

1 inspection, testing, quality, workmanship, delivery, and
2 suitability for a particular purpose. Those criteria that will
3 affect the bid price and be considered in evaluation for award,
4 such as discounts, transportation costs, and total or life
5 cycle costs, shall be objectively measurable. The invitation
6 for bids shall set forth the evaluation criteria to be used.

7 (f) Correction or withdrawal of bids. Correction or
8 withdrawal of inadvertently erroneous bids before or after
9 award, or cancellation of awards of contracts based on bid
10 mistakes, shall be permitted in accordance with rules. After
11 bid opening, no changes in bid prices or other provisions of
12 bids prejudicial to the interest of the State or fair
13 competition shall be permitted. All decisions to permit the
14 correction or withdrawal of bids based on bid mistakes shall be
15 supported by written determination made by a State purchasing
16 officer.

17 (g) Award. The contract shall be awarded with reasonable
18 promptness by written notice to the lowest responsible and
19 responsive bidder whose bid meets the requirements and criteria
20 set forth in the invitation for bids, except when a State
21 purchasing officer determines it is not in the best interest of
22 the State and by written explanation determines another bidder
23 shall receive the award. The explanation shall appear in the
24 appropriate volume of the Illinois Procurement Bulletin.

25 (h) Multi-step sealed bidding. When it is considered
26 impracticable to initially prepare a purchase description to

1 support an award based on price, an invitation for bids may be
2 issued requesting the submission of unpriced offers to be
3 followed by an invitation for bids limited to those bidders
4 whose offers have been qualified under the criteria set forth
5 in the first solicitation.

6 (i) Alternative procedures. Notwithstanding any other
7 provision of this Act to the contrary, the Director of the
8 Illinois Power Agency may create alternative bidding
9 procedures to be used in procuring professional services under
10 subsection (a) of Section 1-75 and subsection (d) of Section
11 1-78 ~~1-75(a)~~ of the Illinois Power Agency Act and Section
12 16-111.5(c) of the Public Utilities Act and to procure
13 renewable energy resources under Section 1-56 of the Illinois
14 Power Agency Act. These alternative procedures shall be set
15 forth together with the other criteria contained in the
16 invitation for bids, and shall appear in the appropriate volume
17 of the Illinois Procurement Bulletin.

18 (j) Reverse auction. Notwithstanding any other provision
19 of this Section and in accordance with rules adopted by the
20 Director of Central Management Services as chief procurement
21 officer, a State purchasing officer under that chief
22 procurement officer's jurisdiction may procure supplies or
23 services through a competitive electronic auction bidding
24 process after the purchasing officer explains in writing to the
25 chief procurement officer his or her determination that the use
26 of such a process will be in the best interest of the State.

1 The chief procurement officer shall publish that determination
2 in his or her next volume of the Illinois Procurement Bulletin.

3 An invitation for bids shall be issued and shall include
4 (i) a procurement description, (ii) all contractual terms,
5 whenever practical, and (iii) conditions applicable to the
6 procurement, including a notice that bids will be received in
7 an electronic auction manner.

8 Public notice of the invitation for bids shall be given in
9 the same manner as provided in subsection (c).

10 Bids shall be accepted electronically at the time and in
11 the manner designated in the invitation for bids. During the
12 auction, a bidder's price shall be disclosed to other bidders.
13 Bidders shall have the opportunity to reduce their bid prices
14 during the auction. At the conclusion of the auction, the
15 record of the bid prices received and the name of each bidder
16 shall be open to public inspection.

17 After the auction period has terminated, withdrawal of bids
18 shall be permitted as provided in subsection (f).

19 The contract shall be awarded within 60 days after the
20 auction by written notice to the lowest responsible bidder, or
21 all bids shall be rejected except as otherwise provided in this
22 Code. Extensions of the date for the award may be made by
23 mutual written consent of the State purchasing officer and the
24 lowest responsible bidder.

25 This subsection does not apply to (i) procurements of
26 professional and artistic services, including but not limited

1 to telecommunications services, communications services,
2 Internet services, and information services, and (ii)
3 contracts for construction projects.

4 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;
5 96-588, eff. 8-18-09; revised 10-5-10.)

6 (Text of Section from P.A. 96-159 and 96-795)

7 Sec. 20-10. Competitive sealed bidding; reverse auction.

8 (a) Conditions for use. All contracts shall be awarded by
9 competitive sealed bidding except as otherwise provided in
10 Section 20-5.

11 (b) Invitation for bids. An invitation for bids shall be
12 issued and shall include a purchase description and the
13 material contractual terms and conditions applicable to the
14 procurement.

15 (c) Public notice. Public notice of the invitation for bids
16 shall be published in the Illinois Procurement Bulletin at
17 least 14 days before the date set in the invitation for the
18 opening of bids.

19 (d) Bid opening. Bids shall be opened publicly in the
20 presence of one or more witnesses at the time and place
21 designated in the invitation for bids. The name of each bidder,
22 the amount of each bid, and other relevant information as may
23 be specified by rule shall be recorded. After the award of the
24 contract, the winning bid and the record of each unsuccessful
25 bid shall be open to public inspection.

1 (e) Bid acceptance and bid evaluation. Bids shall be
2 unconditionally accepted without alteration or correction,
3 except as authorized in this Code. Bids shall be evaluated
4 based on the requirements set forth in the invitation for bids,
5 which may include criteria to determine acceptability such as
6 inspection, testing, quality, workmanship, delivery, and
7 suitability for a particular purpose. Those criteria that will
8 affect the bid price and be considered in evaluation for award,
9 such as discounts, transportation costs, and total or life
10 cycle costs, shall be objectively measurable. The invitation
11 for bids shall set forth the evaluation criteria to be used.

12 (f) Correction or withdrawal of bids. Correction or
13 withdrawal of inadvertently erroneous bids before or after
14 award, or cancellation of awards of contracts based on bid
15 mistakes, shall be permitted in accordance with rules. After
16 bid opening, no changes in bid prices or other provisions of
17 bids prejudicial to the interest of the State or fair
18 competition shall be permitted. All decisions to permit the
19 correction or withdrawal of bids based on bid mistakes shall be
20 supported by written determination made by a State purchasing
21 officer.

22 (g) Award. The contract shall be awarded with reasonable
23 promptness by written notice to the lowest responsible and
24 responsive bidder whose bid meets the requirements and criteria
25 set forth in the invitation for bids, except when a State
26 purchasing officer determines it is not in the best interest of

1 the State and by written explanation determines another bidder
2 shall receive the award. The explanation shall appear in the
3 appropriate volume of the Illinois Procurement Bulletin. The
4 written explanation must include:

5 (1) a description of the agency's needs;

6 (2) a determination that the anticipated cost will be
7 fair and reasonable;

8 (3) a listing of all responsible and responsive
9 bidders; and

10 (4) the name of the bidder selected, pricing, and the
11 reasons for selecting that bidder.

12 Each chief procurement officer may adopt guidelines to
13 implement the requirements of this subsection (g).

14 The written explanation shall be filed with the Legislative
15 Audit Commission and the Procurement Policy Board and be made
16 available for inspection by the public within 30 days after the
17 agency's decision to award the contract.

18 (h) Multi-step sealed bidding. When it is considered
19 impracticable to initially prepare a purchase description to
20 support an award based on price, an invitation for bids may be
21 issued requesting the submission of unpriced offers to be
22 followed by an invitation for bids limited to those bidders
23 whose offers have been qualified under the criteria set forth
24 in the first solicitation.

25 (i) Alternative procedures. Notwithstanding any other
26 provision of this Act to the contrary, the Director of the

1 Illinois Power Agency may create alternative bidding
2 procedures to be used in procuring professional services under
3 subsection (a) of Section 1-75 and subsection (d) of Section
4 1-78 ~~1-75(a)~~ of the Illinois Power Agency Act and Section
5 16-111.5(c) of the Public Utilities Act and to procure
6 renewable energy resources under Section 1-56 of the Illinois
7 Power Agency Act. These alternative procedures shall be set
8 forth together with the other criteria contained in the
9 invitation for bids, and shall appear in the appropriate volume
10 of the Illinois Procurement Bulletin.

11 (j) Reverse auction. Notwithstanding any other provision
12 of this Section and in accordance with rules adopted by the
13 chief procurement officer, that chief procurement officer may
14 procure supplies or services through a competitive electronic
15 auction bidding process after the chief procurement officer
16 determines that the use of such a process will be in the best
17 interest of the State. The chief procurement officer shall
18 publish that determination in his or her next volume of the
19 Illinois Procurement Bulletin.

20 An invitation for bids shall be issued and shall include
21 (i) a procurement description, (ii) all contractual terms,
22 whenever practical, and (iii) conditions applicable to the
23 procurement, including a notice that bids will be received in
24 an electronic auction manner.

25 Public notice of the invitation for bids shall be given in
26 the same manner as provided in subsection (c).

1 Bids shall be accepted electronically at the time and in
2 the manner designated in the invitation for bids. During the
3 auction, a bidder's price shall be disclosed to other bidders.
4 Bidders shall have the opportunity to reduce their bid prices
5 during the auction. At the conclusion of the auction, the
6 record of the bid prices received and the name of each bidder
7 shall be open to public inspection.

8 After the auction period has terminated, withdrawal of bids
9 shall be permitted as provided in subsection (f).

10 The contract shall be awarded within 60 days after the
11 auction by written notice to the lowest responsible bidder, or
12 all bids shall be rejected except as otherwise provided in this
13 Code. Extensions of the date for the award may be made by
14 mutual written consent of the State purchasing officer and the
15 lowest responsible bidder.

16 This subsection does not apply to (i) procurements of
17 professional and artistic services, (ii) telecommunications
18 services, communication services, and information services,
19 and (iii) contracts for construction projects.

20 (Source: P.A. 95-481, eff. 8-28-07; 96-159, eff. 8-10-09;
21 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793 for the
22 effective date of changes made by P.A. 96-795); revised
23 10-5-10.)

24 Section 15. The Public Utilities Act is amended by changing
25 Sections 16-107.5, 16-108, 16-111.5, 16-115, 16-115D, and

1 16-116 as follows:

2 (220 ILCS 5/16-107.5)

3 Sec. 16-107.5. Net electricity metering.

4 (a) The Legislature finds and declares that a program to
5 provide net electricity metering, as defined in this Section,
6 for eligible customers can encourage private investment in
7 renewable energy resources, stimulate economic growth, enhance
8 the continued diversification of Illinois' energy resource
9 mix, and protect the Illinois environment.

10 (b) As used in this Section, (i) "eligible customer" means
11 a retail customer that owns or operates a solar, wind, or other
12 eligible renewable electrical generating facility with a rated
13 capacity of not more than 2,000 kilowatts that is located on
14 the customer's premises or is interconnected to the
15 distribution grid of the customer's electricity provider or
16 alternative retail electric supplier and is intended primarily
17 to offset the customer's own electrical requirements; (ii)
18 "electricity provider" means an electric utility or
19 alternative retail electric supplier; (iii) "eligible
20 renewable electrical generating facility" means a generator
21 powered by solar electric energy, wind, dedicated crops grown
22 for electricity generation, agricultural residues, untreated
23 and unadulterated wood waste, landscape trimmings, livestock
24 manure, anaerobic digestion of livestock or food processing
25 waste, fuel cells or microturbines powered by renewable fuels,

1 or hydroelectric energy; and (iv) "net electricity metering"
2 (or "net metering") means the measurement, during the billing
3 period applicable to an eligible customer, of the net amount of
4 electricity supplied by an electricity provider to the
5 customer's premises or provided to the electricity provider by
6 the customer.

7 (c) A net metering facility shall be equipped with metering
8 equipment that can measure the flow of electricity in both
9 directions at the same rate. For eligible ~~residential~~
10 customers, this shall typically be accomplished through use of
11 a single, bi-directional meter. If the eligible customer's
12 existing electric revenue meter does not meet this requirement,
13 the electricity provider shall arrange for the local electric
14 utility or a meter service provider to install and maintain a
15 new revenue meter at the electricity provider's expense. ~~For~~
16 ~~non residential customers, the electricity provider may~~
17 ~~arrange for the local electric utility or a meter service~~
18 ~~provider to install and maintain metering equipment capable of~~
19 ~~measuring the flow of electricity both into and out of the~~
20 ~~customer's facility at the same rate and ratio, typically~~
21 ~~through the use of a dual channel meter. For generators with a~~
22 ~~nameplate rating of 40 kilowatts and below, the costs of~~
23 ~~installing such equipment shall be paid for by the electricity~~
24 ~~provider. For generators with a nameplate rating over 40~~
25 ~~kilowatts and up to 2,000 kilowatts capacity, the costs of~~
26 ~~installing such equipment shall be paid for by the customer.~~

1 ~~Any subsequent revenue meter change necessitated by any~~
2 ~~eligible customer shall be paid for by the customer.~~

3 (d) An electricity provider shall measure and charge or
4 credit for the net electricity supplied to eligible customers
5 or provided by eligible customers in the following manner:

6 (1) If the amount of electricity used by the customer
7 during the billing period exceeds the amount of electricity
8 produced by the customer, the electricity provider shall
9 charge the customer for the net electricity supplied to and
10 used by the customer as provided in subsection (e) of this
11 Section.

12 (2) If the amount of electricity produced by a customer
13 during the billing period exceeds the amount of electricity
14 used by the customer during that billing period, the
15 electricity provider supplying that customer shall apply a
16 1:1 kilowatt-hour credit to a subsequent bill for service
17 to the customer for the net electricity supplied to the
18 electricity provider. The electricity provider shall
19 continue to carry over any excess kilowatt-hour credits
20 earned and apply those credits to subsequent billing
21 periods to offset any customer-generator consumption in
22 those billing periods until all credits are used or until
23 service is terminated ~~or until the end of the annualized~~
24 ~~period.~~

25 (3) In ~~At the end of the year or annualized over the~~
26 ~~period that service is supplied by means of net metering,~~

1 ~~or in~~ the event that the retail customer terminates service
2 with the electricity provider ~~prior to the end of the year~~
3 ~~or the annualized period~~, any remaining credits in the
4 customer's account shall expire.

5 (e) An electricity provider shall provide to net metering
6 customers electric service at non-discriminatory rates that
7 are identical, with respect to rate structure, retail rate
8 components, and any monthly charges, to the rates that the
9 customer would be charged if not a net metering customer. An
10 electricity provider shall not charge net metering customers
11 any fee or charge or require additional equipment, insurance,
12 or any other requirements not specifically authorized by
13 interconnection standards authorized by the Commission, unless
14 the fee, charge, or other requirement would apply to other
15 similarly situated customers who are not net metering
16 customers. The customer will remain responsible for all taxes,
17 fees, and utility delivery charges that would otherwise be
18 applicable to the net amount of electricity used by the
19 customer. Subsections (c) through (e) of this Section shall not
20 be construed to prevent an arms-length agreement between an
21 electricity provider and an eligible customer that sets forth
22 different prices, terms, and conditions for the provision of
23 net metering service, including, but not limited to, the
24 provision of the appropriate metering equipment for
25 non-residential customers.

26 (f) ~~Notwithstanding the requirements of subsections (c)~~

1 ~~through (c) of this Section, an electricity provider must~~
2 ~~require dual channel metering for non-residential customers~~
3 ~~operating eligible renewable electrical generating facilities~~
4 ~~with a nameplate rating over 40 kilowatts and up to 2,000~~
5 ~~kilowatts. In such cases, electricity charges and credits shall~~
6 ~~be determined as follows:~~

7 ~~(1) The electricity provider shall assess and the~~
8 ~~customer remains responsible for all taxes, fees, and~~
9 ~~utility delivery charges that would otherwise be~~
10 ~~applicable to the gross amount of kilowatt-hours supplied~~
11 ~~to the eligible customer by the electricity provider.~~

12 ~~(2) Each month that service is supplied by means of~~
13 ~~dual channel metering, the electricity provider shall~~
14 ~~compensate the eligible customer for any excess~~
15 ~~kilowatt hour credits at the electricity provider's~~
16 ~~avoided cost of electricity supply over the monthly period~~
17 ~~or as otherwise specified by the terms of a power purchase~~
18 ~~agreement negotiated between the customer and electricity~~
19 ~~provider.~~

20 ~~(3) For all eligible net metering customers taking~~
21 ~~service from an electricity provider under contracts or~~
22 ~~tariffs employing time of use rates, any monthly~~
23 ~~consumption of electricity shall be calculated according~~
24 ~~to the terms of the contract or tariff to which the same~~
25 ~~customer would be assigned to or be eligible for if the~~
26 ~~customer was not a net metering customer. When those same~~

1 customer-generators are net generators during any discrete
2 time of use period, the net kilowatt-hours produced shall
3 be valued at the same price per kilowatt-hour as the
4 electric service provider would charge for retail
5 kilowatt-hour sales during that same time of use period.

6 (g) For purposes of federal and State laws providing
7 renewable energy credits or greenhouse gas credits, the
8 eligible customer shall be treated as owning and having title
9 to the renewable energy attributes, renewable energy credits,
10 and greenhouse gas emission credits related to any electricity
11 produced by the qualified generating unit. The electricity
12 provider may not condition participation in a net metering
13 program on the signing over of a customer's renewable energy
14 credits; provided, however, this subsection (g) shall not be
15 construed to prevent an arms-length agreement between an
16 electricity provider and an eligible customer that sets forth
17 the ownership or title of the credits.

18 (h) Within 120 days after the effective date of this
19 amendatory Act of the 95th General Assembly, the Commission
20 shall establish standards for net metering and, if the
21 Commission has not already acted on its own initiative,
22 standards for the interconnection of eligible renewable
23 generating equipment to the utility system. The
24 interconnection standards shall address any procedural
25 barriers, delays, and administrative costs associated with the
26 interconnection of customer-generation while ensuring the

1 safety and reliability of the units and the electric utility
2 system. The Commission shall consider the Institute of
3 Electrical and Electronics Engineers (IEEE) Standard 1547 and
4 the issues of (i) reasonable and fair fees and costs, (ii)
5 clear timelines for major milestones in the interconnection
6 process, (iii) nondiscriminatory terms of agreement, and (iv)
7 any best practices for interconnection of distributed
8 generation.

9 (i) All electricity providers shall begin to offer net
10 metering no later than April 1, 2008.

11 (j) An electricity provider shall provide net metering to
12 eligible customers until the load of its net metering customers
13 equals 5% ~~1%~~ of the total peak demand supplied by that
14 electricity provider during the previous year. Electricity
15 providers are authorized to offer net metering beyond the 5% ~~1%~~
16 level if they so choose. ~~The number of new eligible customers~~
17 ~~with generators that have a nameplate rating of 40 kilowatts~~
18 ~~and below will be limited to 200 total new billing accounts for~~
19 ~~the utilities (Ameren Companies, ComEd, and MidAmerican) for~~
20 ~~the period of April 1, 2008 through March 31, 2009.~~

21 (k) Each electricity provider shall maintain records and
22 report annually to the Commission the total number of net
23 metering customers served by the provider, as well as the type,
24 capacity, and energy sources of the generating systems used by
25 the net metering customers. Nothing in this Section shall limit
26 the ability of an electricity provider to request the redaction

1 of information deemed by the Commission to be confidential
2 business information. Each electricity provider shall notify
3 the Commission when the total generating capacity of its net
4 metering customers is equal to or in excess of the 1% cap
5 specified in subsection (j) of this Section.

6 (1) Notwithstanding the definition of "eligible customer"
7 in item (i) of subsection (b) of this Section, each electricity
8 provider shall ~~consider whether to~~ allow meter aggregation for
9 the purposes of net metering on:

10 (1) properties owned or leased by multiple customers
11 that contribute to the operation of an eligible renewable
12 electrical generating facility, such as a community-owned
13 wind project, a community-owned biomass project, a
14 community-owned solar project, or a community methane
15 digester processing livestock waste from multiple sources;
16 ~~and~~

17 (2) individual units, apartments, or properties owned
18 or leased by multiple customers and collectively served by
19 a common eligible renewable electrical generating
20 facility, such as an apartment building served by
21 photovoltaic panels on the roof; and ~~and~~

22 (3) multiple meters that are located on an eligible
23 customer's contiguous property and are used to measure only
24 electricity used for the eligible customer's requirements.

25 For the purposes of this subsection (1), "meter
26 aggregation" means the combination of reading and billing on a

1 pro rata basis for the types of eligible customers described in
2 this Section such as to allocate benefits of participation onto
3 the customers' monthly electric bills. Meter aggregation shall
4 be allowed whether the eligible renewable energy generating
5 device is located on the premises of the eligible customer or
6 is interconnected to the distribution grid of the eligible
7 customer's electricity provider or alternative retail electric
8 supplier. Such meter aggregation shall be subject to the terms
9 and conditions approved by the Commission in a proceeding
10 establishing the rules applicable to meter aggregation under
11 this subsection (1), which shall commence no less than 180 days
12 after the effective date of this amendatory Act of the 97th
13 General Assembly and be completed within 365 days after the
14 effective date of this amendatory Act of the 97th General
15 Assembly.

16 (m) Nothing in this Section shall affect the right of an
17 electricity provider to continue to provide, or the right of a
18 retail customer to continue to receive service pursuant to a
19 contract for electric service between the electricity provider
20 and the retail customer in accordance with the prices, terms,
21 and conditions provided for in that contract. Either the
22 electricity provider or the customer may require compliance
23 with the prices, terms, and conditions of the contract.

24 (Source: P.A. 95-420, eff. 8-24-07.)

1 Sec. 16-108. Recovery of costs associated with the
2 provision of delivery services.

3 (a) An electric utility shall file a delivery services
4 tariff with the Commission at least 210 days prior to the date
5 that it is required to begin offering such services pursuant to
6 this Act. An electric utility shall provide the components of
7 delivery services that are subject to the jurisdiction of the
8 Federal Energy Regulatory Commission at the same prices, terms
9 and conditions set forth in its applicable tariff as approved
10 or allowed into effect by that Commission. The Commission shall
11 otherwise have the authority pursuant to Article IX to review,
12 approve, and modify the prices, terms and conditions of those
13 components of delivery services not subject to the jurisdiction
14 of the Federal Energy Regulatory Commission, including the
15 authority to determine the extent to which such delivery
16 services should be offered on an unbundled basis. In making any
17 such determination the Commission shall consider, at a minimum,
18 the effect of additional unbundling on (i) the objective of
19 just and reasonable rates, (ii) electric utility employees, and
20 (iii) the development of competitive markets for electric
21 energy services in Illinois.

22 (b) The Commission shall enter an order approving, or
23 approving as modified, the delivery services tariff no later
24 than 30 days prior to the date on which the electric utility
25 must commence offering such services. The Commission may
26 subsequently modify such tariff pursuant to this Act.

1 (c) The electric utility's tariffs shall define the classes
2 of its customers for purposes of delivery services charges.
3 Delivery services shall be priced and made available to all
4 retail customers electing delivery services in each such class
5 on a nondiscriminatory basis regardless of whether the retail
6 customer chooses the electric utility, an affiliate of the
7 electric utility, or another entity as its supplier of electric
8 power and energy. Charges for delivery services shall be cost
9 based, and shall allow the electric utility to recover the
10 costs of providing delivery services through its charges to its
11 delivery service customers that use the facilities and services
12 associated with such costs. Such costs shall include the costs
13 of owning, operating and maintaining transmission and
14 distribution facilities. The Commission shall also be
15 authorized to consider whether, and if so to what extent, the
16 following costs are appropriately included in the electric
17 utility's delivery services rates: (i) the costs of that
18 portion of generation facilities used for the production and
19 absorption of reactive power in order that retail customers
20 located in the electric utility's service area can receive
21 electric power and energy from suppliers other than the
22 electric utility, and (ii) the costs associated with the use
23 and redispatch of generation facilities to mitigate
24 constraints on the transmission or distribution system in order
25 that retail customers located in the electric utility's service
26 area can receive electric power and energy from suppliers other

1 than the electric utility. Nothing in this subsection shall be
2 construed as directing the Commission to allocate any of the
3 costs described in (i) or (ii) that are found to be
4 appropriately included in the electric utility's delivery
5 services rates to any particular customer group or geographic
6 area in setting delivery services rates.

7 (d) The Commission shall establish charges, terms and
8 conditions for delivery services that are just and reasonable
9 and shall take into account customer impacts when establishing
10 such charges. In establishing charges, terms and conditions for
11 delivery services, the Commission shall take into account
12 voltage level differences. A retail customer shall have the
13 option to request to purchase electric service at any delivery
14 service voltage reasonably and technically feasible from the
15 electric facilities serving that customer's premises provided
16 that there are no significant adverse impacts upon system
17 reliability or system efficiency. A retail customer shall also
18 have the option to request to purchase electric service at any
19 point of delivery that is reasonably and technically feasible
20 provided that there are no significant adverse impacts on
21 system reliability or efficiency. Such requests shall not be
22 unreasonably denied.

23 (e) Electric utilities shall recover the costs of
24 installing, operating or maintaining facilities for the
25 particular benefit of one or more delivery services customers,
26 including without limitation any costs incurred in complying

1 with a customer's request to be served at a different voltage
2 level, directly from the retail customer or customers for whose
3 benefit the costs were incurred, to the extent such costs are
4 not recovered through the charges referred to in subsections
5 (c) and (d) of this Section.

6 (f) An electric utility shall be entitled but not required
7 to implement transition charges in conjunction with the
8 offering of delivery services pursuant to Section 16-104. If an
9 electric utility implements transition charges, it shall
10 implement such charges for all delivery services customers and
11 for all customers described in subsection (h), but shall not
12 implement transition charges for power and energy that a retail
13 customer takes from cogeneration or self-generation facilities
14 located on that retail customer's premises, if such facilities
15 meet the following criteria:

16 (i) the cogeneration or self-generation facilities
17 serve a single retail customer and are located on that
18 retail customer's premises (for purposes of this
19 subparagraph and subparagraph (ii), an industrial or
20 manufacturing retail customer and a third party contractor
21 that is served by such industrial or manufacturing customer
22 through such retail customer's own electrical distribution
23 facilities under the circumstances described in subsection
24 (vi) of the definition of "alternative retail electric
25 supplier" set forth in Section 16-102, shall be considered
26 a single retail customer);

1 (ii) the cogeneration or self-generation facilities
2 either (A) are sized pursuant to generally accepted
3 engineering standards for the retail customer's electrical
4 load at that premises (taking into account standby or other
5 reliability considerations related to that retail
6 customer's operations at that site) or (B) if the facility
7 is a cogeneration facility located on the retail customer's
8 premises, the retail customer is the thermal host for that
9 facility and the facility has been designed to meet that
10 retail customer's thermal energy requirements resulting in
11 electrical output beyond that retail customer's electrical
12 demand at that premises, comply with the operating and
13 efficiency standards applicable to "qualifying facilities"
14 specified in title 18 Code of Federal Regulations Section
15 292.205 as in effect on the effective date of this
16 amendatory Act of 1999;

17 (iii) the retail customer on whose premises the
18 facilities are located either has an exclusive right to
19 receive, and corresponding obligation to pay for, all of
20 the electrical capacity of the facility, or in the case of
21 a cogeneration facility that has been designed to meet the
22 retail customer's thermal energy requirements at that
23 premises, an identified amount of the electrical capacity
24 of the facility, over a minimum 5-year period; and

25 (iv) if the cogeneration facility is sized for the
26 retail customer's thermal load at that premises but exceeds

1 the electrical load, any sales of excess power or energy
2 are made only at wholesale, are subject to the jurisdiction
3 of the Federal Energy Regulatory Commission, and are not
4 for the purpose of circumventing the provisions of this
5 subsection (f).

6 If a generation facility located at a retail customer's
7 premises does not meet the above criteria, an electric utility
8 implementing transition charges shall implement a transition
9 charge until December 31, 2006 for any power and energy taken
10 by such retail customer from such facility as if such power and
11 energy had been delivered by the electric utility. Provided,
12 however, that an industrial retail customer that is taking
13 power from a generation facility that does not meet the above
14 criteria but that is located on such customer's premises will
15 not be subject to a transition charge for the power and energy
16 taken by such retail customer from such generation facility if
17 the facility does not serve any other retail customer and
18 either was installed on behalf of the customer and for its own
19 use prior to January 1, 1997, or is both predominantly fueled
20 by byproducts of such customer's manufacturing process at such
21 premises and sells or offers an average of 300 megawatts or
22 more of electricity produced from such generation facility into
23 the wholesale market. Such charges shall be calculated as
24 provided in Section 16-102, and shall be collected on each
25 kilowatt-hour delivered under a delivery services tariff to a
26 retail customer from the date the customer first takes delivery

1 services until December 31, 2006 except as provided in
2 subsection (h) of this Section. Provided, however, that an
3 electric utility, other than an electric utility providing
4 service to at least 1,000,000 customers in this State on
5 January 1, 1999, shall be entitled to petition for entry of an
6 order by the Commission authorizing the electric utility to
7 implement transition charges for an additional period ending no
8 later than December 31, 2008. The electric utility shall file
9 its petition with supporting evidence no earlier than 16
10 months, and no later than 12 months, prior to December 31,
11 2006. The Commission shall hold a hearing on the electric
12 utility's petition and shall enter its order no later than 8
13 months after the petition is filed. The Commission shall
14 determine whether and to what extent the electric utility shall
15 be authorized to implement transition charges for an additional
16 period. The Commission may authorize the electric utility to
17 implement transition charges for some or all of the additional
18 period, and shall determine the mitigation factors to be used
19 in implementing such transition charges; provided, that the
20 Commission shall not authorize mitigation factors less than
21 110% of those in effect during the 12 months ended December 31,
22 2006. In making its determination, the Commission shall
23 consider the following factors: the necessity to implement
24 transition charges for an additional period in order to
25 maintain the financial integrity of the electric utility; the
26 prudence of the electric utility's actions in reducing its

1 costs since the effective date of this amendatory Act of 1997;
2 the ability of the electric utility to provide safe, adequate
3 and reliable service to retail customers in its service area;
4 and the impact on competition of allowing the electric utility
5 to implement transition charges for the additional period.

6 (g) The electric utility shall file tariffs that establish
7 the transition charges to be paid by each class of customers to
8 the electric utility in conjunction with the provision of
9 delivery services. The electric utility's tariffs shall define
10 the classes of its customers for purposes of calculating
11 transition charges. The electric utility's tariffs shall
12 provide for the calculation of transition charges on a
13 customer-specific basis for any retail customer whose average
14 monthly maximum electrical demand on the electric utility's
15 system during the 6 months with the customer's highest monthly
16 maximum electrical demands equals or exceeds 3.0 megawatts for
17 electric utilities having more than 1,000,000 customers, and
18 for other electric utilities for any customer that has an
19 average monthly maximum electrical demand on the electric
20 utility's system of one megawatt or more, and (A) for which
21 there exists data on the customer's usage during the 3 years
22 preceding the date that the customer became eligible to take
23 delivery services, or (B) for which there does not exist data
24 on the customer's usage during the 3 years preceding the date
25 that the customer became eligible to take delivery services, if
26 in the electric utility's reasonable judgment there exists

1 comparable usage information or a sufficient basis to develop
2 such information, and further provided that the electric
3 utility can require customers for which an individual
4 calculation is made to sign contracts that set forth the
5 transition charges to be paid by the customer to the electric
6 utility pursuant to the tariff.

7 (h) An electric utility shall also be entitled to file
8 tariffs that allow it to collect transition charges from retail
9 customers in the electric utility's service area that do not
10 take delivery services but that take electric power or energy
11 from an alternative retail electric supplier or from an
12 electric utility other than the electric utility in whose
13 service area the customer is located. Such charges shall be
14 calculated, in accordance with the definition of transition
15 charges in Section 16-102, for the period of time that the
16 customer would be obligated to pay transition charges if it
17 were taking delivery services, except that no deduction for
18 delivery services revenues shall be made in such calculation,
19 and usage data from the customer's class shall be used where
20 historical usage data is not available for the individual
21 customer. The customer shall be obligated to pay such charges
22 on a lump sum basis on or before the date on which the customer
23 commences to take service from the alternative retail electric
24 supplier or other electric utility, provided, that the electric
25 utility in whose service area the customer is located shall
26 offer the customer the option of signing a contract pursuant to

1 which the customer pays such charges ratably over the period in
2 which the charges would otherwise have applied.

3 (i) An electric utility shall be entitled to add to the
4 bills of delivery services customers charges pursuant to
5 Sections 9-221, 9-222 (except as provided in Section 9-222.1),
6 and Section 16-114 of this Act, Section 5-5 of the Electricity
7 Infrastructure Maintenance Fee Law, Section 6-5 of the
8 Renewable Energy, Energy Efficiency, and Coal Resources
9 Development Law of 1997, and Section 13 of the Energy
10 Assistance Act.

11 (j) If a retail customer that obtains electric power and
12 energy from cogeneration or self-generation facilities
13 installed for its own use on or before January 1, 1997,
14 subsequently takes service from an alternative retail electric
15 supplier or an electric utility other than the electric utility
16 in whose service area the customer is located for any portion
17 of the customer's electric power and energy requirements
18 formerly obtained from those facilities (including that amount
19 purchased from the utility in lieu of such generation and not
20 as standby power purchases, under a cogeneration displacement
21 tariff in effect as of the effective date of this amendatory
22 Act of 1997), the transition charges otherwise applicable
23 pursuant to subsections (f), (g), or (h) of this Section shall
24 not be applicable in any year to that portion of the customer's
25 electric power and energy requirements formerly obtained from
26 those facilities, provided, that for purposes of this

1 subsection (j), such portion shall not exceed the average
2 number of kilowatt-hours per year obtained from the
3 cogeneration or self-generation facilities during the 3 years
4 prior to the date on which the customer became eligible for
5 delivery services, except as provided in subsection (f) of
6 Section 16-110.

7 (k) Beginning June 1, 2012, the electric utility shall be
8 entitled to recover through its tariffed charges for delivery
9 services (1) the costs of any renewable energy credits
10 purchased to meet the renewable energy resource standards of
11 subsection (c) of Section 1-75 of the Illinois Power Agency
12 Act, pursuant to the electric utility's procurement plan as
13 approved in accordance with Section 16-111.5 of this Act, and
14 (2) any excluded renewable energy resources contract costs as
15 defined in Section 1-10 of the Illinois Power Agency Act. The
16 Commission shall determine a just and reasonable allocation of
17 such costs to the various classes of customers taking delivery
18 services from the electric utility, taking into account the
19 provisions of paragraphs (2) and (6) of subsection (c) of
20 Section 1-75 of the Illinois Power Agency Act and, with respect
21 to excluded renewable energy resources contract costs, the
22 extent to which the electric utility's eligible retail
23 customers have become delivery services non-eligible retail
24 customers subsequent to the year that the contracts giving rise
25 to the excluded renewable energy resources costs were entered
26 into. Provided, that in no event shall the Commission allocate

1 the costs of renewable energy credits and excluded renewable
2 energy resources contract costs in a manner that causes the
3 rate limitations specified in paragraph (2) of subsection (c)
4 of Section 1-75 of the Illinois Power Agency Act to be exceeded
5 for any class of customers.

6 For purposes of recovery through the electric utility's
7 tariffed charges for delivery services, the cost of the
8 renewable energy credits included in purchases of bundled
9 renewable energy resources, as defined in Section 1-10 of the
10 Illinois Power Agency Act, to meet the renewable energy
11 resource standards applicable to the load of the electric
12 utility's eligible retail customers, as defined in subsection
13 (a) of Section 16-111.5 of this Act, shall be the allocated
14 renewable energy credit prices approved by the Commission in
15 accordance with subsection (f) of Section 16-111.5 of this Act.

16 The electric utility shall be entitled to recover the cost
17 of such renewable energy credits and excluded renewable energy
18 resources contract costs through an automatic adjustment
19 charge provision in the electric utility's delivery services
20 tariffs that allows the electric utility to adjust its tariffed
21 charges on an quarterly basis for changes in its costs incurred
22 to purchase renewable energy credits and its excluded renewable
23 energy resources contract costs, if any, without the need to
24 file a general delivery services rate case. The electric
25 utility's collections pursuant to such an automatic adjustment
26 charge tariff shall be subject to annual review,

1 reconciliation, and true-up against actual costs by the
2 Commission pursuant to a procedure that shall be specified in
3 the electric utility's tariff. The procedure shall provide that
4 any difference between the electric utility's collections
5 pursuant to the automatic adjustment charge for an annual
6 period and the electric utility's actual costs of renewable
7 energy credits and actual excluded renewable energy resources
8 contract costs for the annual period shall be refunded to or
9 collected from, as applicable, the electric utility's delivery
10 services customers in subsequent periods.

11 (Source: P.A. 91-50, eff. 6-30-99; 92-690, eff. 7-18-02.)

12 (220 ILCS 5/16-111.5)

13 Sec. 16-111.5. Provisions relating to procurement.

14 (a) An electric utility that on December 31, 2005 served at
15 least 100,000 customers in Illinois shall procure power, energy
16 efficiency products, and energy for its eligible retail
17 customers in accordance with the applicable provisions set
18 forth in Section 1-75 of the Illinois Power Agency Act and this
19 Section and, for years beginning on and after June 1, 2012,
20 shall procure renewable energy credits with respect to the
21 kilowatthour usage of delivery services non-eligible retail
22 customers in the electric utility's service area in accordance
23 with the applicable provisions set forth in Section 1-75 of the
24 Illinois Power Agency Act and this Section. "Eligible retail
25 customers" for the purposes of this Section means those retail

1 customers that purchase power and energy from the electric
2 utility under fixed-price bundled service tariffs, other than
3 those retail customers whose service is declared or deemed
4 competitive under Section 16-113 and those other customer
5 groups specified in this Section, including self-generating
6 customers, customers electing hourly pricing, or those
7 customers who are otherwise ineligible for fixed-price bundled
8 tariff service. "Delivery services non-eligible retail
9 customers" for the purposes of this Section has the meaning set
10 forth in Section 1-10 of the Illinois Power Agency Act. Those
11 customers that are excluded from the definition of "eligible
12 retail customers" shall not be included in the procurement plan
13 electric supply service ~~load~~ requirements, and the utility
14 shall procure any supply requirements, including capacity,
15 ancillary services, energy efficiency products, and hourly
16 priced energy, in the applicable markets as needed to serve
17 those customers, provided that the utility may include in its
18 procurement plan load requirements for the load that is
19 associated with those retail customers whose service has been
20 declared or deemed competitive pursuant to Section 16-113 of
21 this Act to the extent that those customers are purchasing
22 power and energy during one of the transition periods
23 identified in subsection (b) of Section 16-113 of this Act.

24 (b) A procurement plan shall be prepared for each electric
25 utility consistent with the applicable requirements of the
26 Illinois Power Agency Act and this Section. For purposes of

1 this Section, Illinois electric utilities that are affiliated
2 by virtue of a common parent company are considered to be a
3 single electric utility. Each procurement plan shall analyze
4 the projected balance of supply and demand for eligible retail
5 customers over a 5-year period with the first planning year
6 beginning on June 1 of the year following the year in which the
7 plan is filed. The plan shall specifically identify the
8 wholesale products to be procured following plan approval, and
9 shall follow all the requirements set forth in the Public
10 Utilities Act and all applicable State and federal laws,
11 statutes, rules, or regulations, as well as Commission orders.
12 Nothing in this Section precludes consideration of contracts
13 longer than 5 years and related forecast data. Unless specified
14 otherwise in this Section, in the procurement plan or in the
15 implementing tariff, any procurement occurring in accordance
16 with this plan shall be competitively bid through a request for
17 proposals process. Approval and implementation of the
18 procurement plan shall be subject to review and approval by the
19 Commission according to the provisions set forth in this
20 Section. A procurement plan shall include each of the following
21 components:

22 (1) Hourly load analysis. This analysis shall include:

23 (i) multi-year historical analysis of hourly
24 loads;

25 (ii) switching trends and competitive retail
26 market analysis;

1 (iii) known or projected changes to future loads;

2 and

3 (iv) growth forecasts by customer class.

4 (2) Analysis of the impact of any demand side and
5 renewable energy initiatives. This analysis shall include:

6 (i) the impact of demand response programs, both
7 current and projected;

8 (ii) supply side needs that are projected to be
9 offset by purchases of renewable energy resources, if
10 any; and

11 (iii) the impact of energy efficiency programs,
12 both current and projected.

13 (3) A plan for meeting the expected load requirements
14 that will not be met through preexisting contracts. This
15 plan shall include:

16 (i) definitions of the different retail customer
17 classes for which supply is being purchased;

18 (ii) the proposed mix of demand-response products
19 for which contracts will be executed during the next
20 year. The cost-effective demand-response measures
21 shall be procured whenever the cost is lower than
22 procuring comparable capacity products, provided that
23 such products shall:

24 (A) be procured by a demand-response provider
25 from eligible retail customers;

26 (B) at least satisfy the demand-response

1 requirements of the regional transmission
2 organization market in which the utility's service
3 territory is located, including, but not limited
4 to, any applicable capacity or dispatch
5 requirements;

6 (C) provide for customers' participation in
7 the stream of benefits produced by the
8 demand-response products;

9 (D) provide for reimbursement by the
10 demand-response provider of the utility for any
11 costs incurred as a result of the failure of the
12 supplier of such products to perform its
13 obligations thereunder; and

14 (E) meet the same credit requirements as apply
15 to suppliers of capacity, in the applicable
16 regional transmission organization market;

17 (iii) the proposed energy efficiency products for
18 which contracts will be executed during the next year.
19 The cost effective energy efficiency measures shall be
20 procured whenever the cost is lower than the combined
21 avoided costs of energy, capacity, transmission, and
22 the renewable portfolio standard for a comparable
23 volume of energy provided that the energy efficiency
24 products shall:

25 (A) be procured by a energy efficiency
26 provider from eligible retail customers;

1 (B) at least satisfy evaluation, measurement,
2 and verification standards established pursuant to
3 Section 8-103 of this Act;

4 (C) provide for reimbursement by the energy
5 efficiency provider of the utility for any costs
6 incurred as a result of the failure of the supplier
7 of such products to perform its obligations
8 thereunder; and

9 (D) meet the same credit requirements as apply
10 to suppliers of capacity, in the applicable
11 regional transmission organization market;

12 (iv) ~~(iii)~~ monthly forecasted system supply
13 requirements, including expected minimum, maximum, and
14 average values for the planning period;

15 (v) ~~(iv)~~ the proposed mix and selection of standard
16 wholesale products for which contracts will be
17 executed during the next year, separately or in
18 combination, to meet that portion of its load
19 requirements not met through pre-existing contracts,
20 including but not limited to monthly 5 x 16 peak period
21 block energy, monthly off-peak wrap energy, monthly 7 x
22 24 energy, annual 5 x 16 energy, annual off-peak wrap
23 energy, annual 7 x 24 energy, monthly capacity, annual
24 capacity, peak load capacity obligations, capacity
25 purchase plan, and ancillary services;

26 (vi) ~~(v)~~ proposed term structures for each

1 wholesale product type included in the proposed
2 procurement plan portfolio of products; and

3 (vii) ~~(vi)~~ an assessment of the price risk, load
4 uncertainty, and other factors that are associated
5 with the proposed procurement plan; this assessment,
6 to the extent possible, shall include an analysis of
7 the following factors: contract terms, time frames for
8 securing products or services, fuel costs, weather
9 patterns, transmission costs, market conditions, and
10 the governmental regulatory environment; the proposed
11 procurement plan shall also identify alternatives for
12 those portfolio measures that are identified as having
13 significant price risk.

14 (4) Proposed procedures for balancing loads. The
15 procurement plan shall include, for load requirements
16 included in the procurement plan, the process for (i)
17 hourly balancing of supply and demand and (ii) the criteria
18 for portfolio re-balancing in the event of significant
19 shifts in load.

20 (c) The procurement process set forth in Section 1-75 of
21 the Illinois Power Agency Act and subsection (e) of this
22 Section shall be administered by a procurement administrator
23 and monitored by a procurement monitor.

24 (1) The procurement administrator shall:

25 (i) design the final procurement process in
26 accordance with Section 1-75 of the Illinois Power

1 Agency Act and subsection (e) of this Section following
2 Commission approval of the procurement plan;

3 (ii) develop benchmarks in accordance with
4 subsection (e)(3) to be used to evaluate bids; these
5 benchmarks shall be submitted to the Commission for
6 review and approval on a confidential basis prior to
7 the procurement event;

8 (iii) serve as the interface between the electric
9 utility and suppliers;

10 (iv) manage the bidder pre-qualification and
11 registration process;

12 (v) obtain the electric utilities' agreement to
13 the final form of all supply contracts and credit
14 collateral agreements;

15 (vi) administer the request for proposals process;

16 (vii) have the discretion to negotiate to
17 determine whether bidders are willing to lower the
18 price of bids that meet the benchmarks approved by the
19 Commission; any post-bid negotiations with bidders
20 shall be limited to price only and shall be completed
21 within 24 hours after opening the sealed bids and shall
22 be conducted in a fair and unbiased manner; in
23 conducting the negotiations, there shall be no
24 disclosure of any information derived from proposals
25 submitted by competing bidders; if information is
26 disclosed to any bidder, it shall be provided to all

1 competing bidders;

2 (viii) maintain confidentiality of supplier and
3 bidding information in a manner consistent with all
4 applicable laws, rules, regulations, and tariffs;

5 (ix) submit a confidential report to the
6 Commission recommending acceptance or rejection of
7 bids;

8 (x) notify the utility of contract counterparties
9 and contract specifics; and

10 (xi) administer related contingency procurement
11 events.

12 (2) The procurement monitor, who shall be retained by
13 the Commission, shall:

14 (i) monitor interactions among the procurement
15 administrator, suppliers, and utility;

16 (ii) monitor and report to the Commission on the
17 progress of the procurement process;

18 (iii) provide an independent confidential report
19 to the Commission regarding the results of the
20 procurement event;

21 (iv) assess compliance with the procurement plans
22 approved by the Commission for each utility that on
23 December 31, 2005 provided electric service to a least
24 100,000 customers in Illinois;

25 (v) preserve the confidentiality of supplier and
26 bidding information in a manner consistent with all

1 applicable laws, rules, regulations, and tariffs;

2 (vi) provide expert advice to the Commission and
3 consult with the procurement administrator regarding
4 issues related to procurement process design, rules,
5 protocols, and policy-related matters; and

6 (vii) consult with the procurement administrator
7 regarding the development and use of benchmark
8 criteria, standard form contracts, credit policies,
9 and bid documents.

10 (d) Except as provided in subsection (j), the planning
11 process shall be conducted as follows:

12 (1) Beginning in 2008, each Illinois utility procuring
13 power pursuant to this Section shall annually provide a
14 range of load forecasts to the Illinois Power Agency by
15 July 15 of each year, or such other date as may be required
16 by the Commission or Agency. The load forecasts shall cover
17 the 5-year procurement planning period for the next
18 procurement plan and shall include hourly data
19 representing a high-load, low-load and expected-load
20 scenario for the load of the eligible retail customers. For
21 procurement planning periods beginning on and after June 1,
22 2012, the electric utility shall provide a range of annual
23 forecasts for the 5-year procurement planning period of the
24 total kilowatthour usage of eligible retail customers and
25 the total annual kilowatthour usage of delivery services
26 non-eligible retail customers in its service area. The

1 utility shall provide supporting data and assumptions for
2 each of the scenarios.

3 (2) Beginning in 2008, the Illinois Power Agency shall
4 prepare a procurement plan by August 15th of each year, or
5 such other date as may be required by the Commission. The
6 procurement plan shall identify the portfolio of
7 demand-response, energy efficiency products, and power and
8 energy products to be procured. Cost-effective
9 demand-response measures and cost-effective energy
10 measures shall be procured as set forth in items ~~item~~ (iii)
11 and (iv) of subsection (b) of this Section. Copies of the
12 procurement plan shall be posted and made publicly
13 available on the Agency's and Commission's websites, and
14 copies shall also be provided to each affected electric
15 utility. An affected utility shall have 30 days following
16 the date of posting to provide comment to the Agency on the
17 procurement plan. Other interested entities also may
18 comment on the procurement plan. All comments submitted to
19 the Agency shall be specific, supported by data or other
20 detailed analyses, and, if objecting to all or a portion of
21 the procurement plan, accompanied by specific alternative
22 wording or proposals. All comments shall be posted on the
23 Agency's and Commission's websites. During this 30-day
24 comment period, the Agency shall hold at least one public
25 hearing within each utility's service area for the purpose
26 of receiving public comment on the procurement plan. Within

1 14 days following the end of the 30-day review period, the
2 Agency shall revise the procurement plan as necessary based
3 on the comments received and file the procurement plan with
4 the Commission and post the procurement plan on the
5 websites.

6 (3) Within 5 days after the filing of the procurement
7 plan, any person objecting to the procurement plan shall
8 file an objection with the Commission. Within 10 days after
9 the filing, the Commission shall determine whether a
10 hearing is necessary. The Commission shall enter its order
11 confirming or modifying the procurement plan within 90 days
12 after the filing of the procurement plan by the Illinois
13 Power Agency.

14 (4) The Commission shall approve the procurement plan,
15 including expressly the forecast used in the procurement
16 plan, if the Commission determines that it will ensure
17 adequate, reliable, affordable, efficient, and
18 environmentally sustainable electric service at the lowest
19 total cost over time, taking into account any benefits of
20 price stability.

21 (e) The procurement process shall include each of the
22 following components:

23 (1) Solicitation, pre-qualification, and registration
24 of bidders. The procurement administrator shall
25 disseminate information to potential bidders to promote a
26 procurement event, notify potential bidders that the

1 procurement administrator may enter into a post-bid price
2 negotiation with bidders that meet the applicable
3 benchmarks, provide supply requirements, and otherwise
4 explain the competitive procurement process. In addition
5 to such other publication as the procurement administrator
6 determines is appropriate, this information shall be
7 posted on the Illinois Power Agency's and the Commission's
8 websites. The procurement administrator shall also
9 administer the prequalification process, including
10 evaluation of credit worthiness, compliance with
11 procurement rules, and agreement to the standard form
12 contract developed pursuant to paragraph (2) of this
13 subsection (e). The procurement administrator shall then
14 identify and register bidders to participate in the
15 procurement event.

16 (2) Standard contract forms and credit terms and
17 instruments. The procurement administrator, in
18 consultation with the utilities, the Commission, and other
19 interested parties and subject to Commission oversight,
20 shall develop and provide standard contract forms for the
21 supplier contracts that meet generally accepted industry
22 practices. Standard credit terms and instruments that meet
23 generally accepted industry practices shall be similarly
24 developed. The procurement administrator shall make
25 available to the Commission all written comments it
26 receives on the contract forms, credit terms, or

1 instruments. If the procurement administrator cannot reach
2 agreement with the applicable electric utility as to the
3 contract terms and conditions, the procurement
4 administrator must notify the Commission of any disputed
5 terms and the Commission shall resolve the dispute. The
6 terms of the contracts shall not be subject to negotiation
7 by winning bidders, and the bidders must agree to the terms
8 of the contract in advance so that winning bids are
9 selected solely on the basis of price.

10 (3) Establishment of a market-based price benchmark.
11 As part of the development of the procurement process, the
12 procurement administrator, in consultation with the
13 Commission staff, Agency staff, and the procurement
14 monitor, shall establish benchmarks for evaluating the
15 final prices in the contracts for each of the products that
16 will be procured through the procurement process. The
17 benchmarks shall be based on price data for similar
18 products for the same delivery period and same delivery
19 hub, or other delivery hubs after adjusting for that
20 difference. The price benchmarks may also be adjusted to
21 take into account differences between the information
22 reflected in the underlying data sources and the specific
23 products and procurement process being used to procure
24 power for the Illinois utilities. The benchmarks shall be
25 confidential but shall be provided to, and will be subject
26 to Commission review and approval, prior to a procurement

1 event.

2 (4) Request for proposals competitive procurement
3 process. The procurement administrator shall design and
4 issue a request for proposals to supply electricity in
5 accordance with each utility's procurement plan, as
6 approved by the Commission. The request for proposals shall
7 set forth a procedure for sealed, binding commitment
8 bidding with pay-as-bid settlement, and provision for
9 selection of bids on the basis of price.

10 (5) A plan for implementing contingencies in the event
11 of supplier default or failure of the procurement process
12 to fully meet the expected load requirement due to
13 insufficient supplier participation, Commission rejection
14 of results, or any other cause.

15 (i) Event of supplier default: In the event of
16 supplier default, the utility shall review the
17 contract of the defaulting supplier to determine if the
18 amount of supply is 200 megawatts or greater, and if
19 there are more than 60 days remaining of the contract
20 term. If both of these conditions are met, and the
21 default results in termination of the contract, then
22 the utility shall immediately notify the Illinois
23 Power Agency that a request for proposals must be
24 issued to procure replacement power or energy
25 efficiency products, and the procurement administrator
26 shall run an additional procurement event. If the

1 contracted supply of the defaulting supplier is less
2 than 200 megawatts or there are less than 60 days
3 remaining of the contract term, then the utility shall
4 procure energy efficiency products or power and energy
5 from the applicable regional transmission organization
6 market, including ancillary services, capacity, energy
7 efficiency products, and day-ahead or real time
8 energy, or both, for the duration of the contract term
9 to replace the contracted supply; provided, however,
10 that if a needed product is not available through the
11 regional transmission organization market it shall be
12 purchased from the wholesale market.

13 (ii) Failure of the procurement process to fully
14 meet the expected load requirement: If the procurement
15 process fails to fully meet the expected load
16 requirement due to insufficient supplier participation
17 or due to a Commission rejection of the procurement
18 results, the procurement administrator, the
19 procurement monitor, and the Commission staff shall
20 meet within 10 days to analyze potential causes of low
21 supplier interest or causes for the Commission
22 decision. If changes are identified that would likely
23 result in increased supplier participation, or that
24 would address concerns causing the Commission to
25 reject the results of the prior procurement event, the
26 procurement administrator may implement those changes

1 and rerun the request for proposals process according
2 to a schedule determined by those parties and
3 consistent with Section 1-75 of the Illinois Power
4 Agency Act and this subsection. In any event, a new
5 request for proposals process shall be implemented by
6 the procurement administrator within 90 days after the
7 determination that the procurement process has failed
8 to fully meet the expected load requirement.

9 (iii) In all cases where there is insufficient
10 supply provided under contracts awarded through the
11 procurement process to fully meet the electric
12 utility's load requirement, the utility shall meet the
13 load requirement by procuring power and energy from the
14 applicable regional transmission organization market,
15 including ancillary services, capacity, and day-ahead
16 or real time energy or both; provided, however, that if
17 a needed product is not available through the regional
18 transmission organization market it shall be purchased
19 from the wholesale market.

20 (6) The procurement process described in this
21 subsection is exempt from the requirements of the Illinois
22 Procurement Code, pursuant to Section 20-10 of that Code.

23 (f) Within 2 business days after opening the sealed bids,
24 the procurement administrator shall submit a confidential
25 report to the Commission. The report shall contain the results
26 of the bidding for each of the products along with the

1 procurement administrator's recommendation for the acceptance
2 and rejection of bids based on the price benchmark criteria and
3 other factors observed in the process. For procurements
4 applicable to periods beginning on and after June 1, 2012, the
5 report shall also include, with respect to each recommended
6 purchase of bundled renewable energy resources as defined in
7 Section 1-10 of the Illinois Power Agency Act, an allocation of
8 the price between the price of the electricity generated by
9 renewable energy resources and the price of the associated
10 renewable energy credits. The procurement monitor also shall
11 submit a confidential report to the Commission within 2
12 business days after opening the sealed bids. The report shall
13 contain the procurement monitor's assessment of bidder
14 behavior in the process as well as an assessment of the
15 procurement administrator's compliance with the procurement
16 process and rules. The Commission shall review the confidential
17 reports submitted by the procurement administrator and
18 procurement monitor, and shall accept or reject the
19 recommendations of the procurement administrator, including
20 the recommended allocation of the price of each purchase of
21 bundled renewable energy resources between the price of the
22 electricity and the price of the associated renewable energy
23 credits, within 2 business days after receipt of the reports.

24 (g) Within 3 business days after the Commission decision
25 approving the results of a procurement event, the utility shall
26 enter into binding contractual arrangements with the winning

1 suppliers using the standard form contracts; except that the
2 utility shall not be required either directly or indirectly to
3 execute the contracts if a tariff that is consistent with
4 subsection (l) of this Section has not been approved and placed
5 into effect for that utility.

6 (h) The names of the successful bidders and the load
7 weighted average of the winning bid prices for each contract
8 type and for each contract term shall be made available to the
9 public at the time of Commission approval of a procurement
10 event. The Commission, the procurement monitor, the
11 procurement administrator, the Illinois Power Agency, and all
12 participants in the procurement process shall maintain the
13 confidentiality of all other supplier and bidding information
14 in a manner consistent with all applicable laws, rules,
15 regulations, and tariffs. Confidential information, including
16 the confidential reports submitted by the procurement
17 administrator and procurement monitor pursuant to subsection
18 (f) of this Section, shall not be made publicly available and
19 shall not be discoverable by any party in any proceeding,
20 absent a compelling demonstration of need, nor shall those
21 reports be admissible in any proceeding other than one for law
22 enforcement purposes.

23 (i) Within 2 business days after a Commission decision
24 approving the results of a procurement event or such other date
25 as may be required by the Commission from time to time, the
26 utility shall file for informational purposes with the

1 Commission its actual or estimated retail supply charges, as
2 applicable, by customer supply group reflecting the costs
3 associated with the procurement and computed in accordance with
4 the tariffs filed pursuant to subsection (l) of this Section
5 and approved by the Commission.

6 (j) Within 60 days following the effective date of this
7 amendatory Act, each electric utility that on December 31, 2005
8 provided electric service to at least 100,000 customers in
9 Illinois shall prepare and file with the Commission an initial
10 procurement plan, which shall conform in all material respects
11 to the requirements of the procurement plan set forth in
12 subsection (b); provided, however, that the Illinois Power
13 Agency Act shall not apply to the initial procurement plan
14 prepared pursuant to this subsection. The initial procurement
15 plan shall identify the portfolio of power and energy products
16 to be procured and delivered for the period June 2008 through
17 May 2009, and shall identify the proposed procurement
18 administrator, who shall have the same experience and expertise
19 as is required of a procurement administrator hired pursuant to
20 Section 1-75 of the Illinois Power Agency Act. Copies of the
21 procurement plan shall be posted and made publicly available on
22 the Commission's website. The initial procurement plan may
23 include contracts for renewable resources that extend beyond
24 May 2009.

25 (i) Within 14 days following filing of the initial
26 procurement plan, any person may file a detailed objection

1 with the Commission contesting the procurement plan
2 submitted by the electric utility. All objections to the
3 electric utility's plan shall be specific, supported by
4 data or other detailed analyses. The electric utility may
5 file a response to any objections to its procurement plan
6 within 7 days after the date objections are due to be
7 filed. Within 7 days after the date the utility's response
8 is due, the Commission shall determine whether a hearing is
9 necessary. If it determines that a hearing is necessary, it
10 shall require the hearing to be completed and issue an
11 order on the procurement plan within 60 days after the
12 filing of the procurement plan by the electric utility.

13 (ii) The order shall approve or modify the procurement
14 plan, approve an independent procurement administrator,
15 and approve or modify the electric utility's tariffs that
16 are proposed with the initial procurement plan. The
17 Commission shall approve the procurement plan if the
18 Commission determines that it will ensure adequate,
19 reliable, affordable, efficient, and environmentally
20 sustainable electric service at the lowest total cost over
21 time, taking into account any benefits of price stability.

22 (k) In order to promote price stability for residential and
23 small commercial customers during the transition to
24 competition in Illinois, and notwithstanding any other
25 provision of this Act, each electric utility subject to this
26 Section shall enter into one or more multi-year financial swap

1 contracts that become effective on the effective date of this
2 amendatory Act. These contracts may be executed with generators
3 and power marketers, including affiliated interests of the
4 electric utility. These contracts shall be for a term of no
5 more than 5 years and shall, for each respective utility or for
6 any Illinois electric utilities that are affiliated by virtue
7 of a common parent company and that are thereby considered a
8 single electric utility for purposes of this subsection (k),
9 not exceed in the aggregate 3,000 megawatts for any hour of the
10 year. The contracts shall be financial contracts and not energy
11 sales contracts. The contracts shall be executed as
12 transactions under a negotiated master agreement based on the
13 form of master agreement for financial swap contracts sponsored
14 by the International Swaps and Derivatives Association, Inc.
15 and shall be considered pre-existing contracts in the
16 utilities' procurement plans for residential and small
17 commercial customers. Costs incurred pursuant to a contract
18 authorized by this subsection (k) shall be deemed prudently
19 incurred and reasonable in amount and the electric utility
20 shall be entitled to full cost recovery pursuant to the tariffs
21 filed with the Commission.

22 (1) An electric utility shall recover its costs incurred
23 under this Section, including, but not limited to, the costs of
24 procuring power, energy efficiency products, and energy
25 demand-response resources under this Section. The utility
26 shall file with the initial procurement plan its proposed

1 tariffs through which its costs of procuring power that are
2 incurred pursuant to a Commission-approved procurement plan
3 and those other costs identified in this subsection (1), will
4 be recovered. The tariffs shall include a formula rate or
5 charge designed to pass through both the costs incurred by the
6 utility in procuring a supply of electric power and energy for
7 the applicable customer classes with no mark-up or return on
8 the price paid by the utility for that supply, plus any just
9 and reasonable costs that the utility incurs in arranging and
10 providing for the supply of electric power and energy. The
11 formula rate or charge shall also contain provisions that
12 ensure that its application does not result in over or under
13 recovery due to changes in customer usage and demand patterns,
14 and that provide for the correction, on at least an annual
15 basis, of any accounting errors that may occur. A utility shall
16 recover through the tariff all reasonable costs incurred to
17 implement or comply with any procurement plan that is developed
18 and put into effect pursuant to Section 1-75 of the Illinois
19 Power Agency Act and this Section, including any fees assessed
20 by the Illinois Power Agency, costs associated with load
21 balancing, and contingency plan costs. The electric utility
22 shall also recover its full costs of procuring electric supply
23 for which it contracted before the effective date of this
24 Section in conjunction with the provision of full requirements
25 service under fixed-price bundled service tariffs subsequent
26 to December 31, 2006. All such costs shall be deemed to have

1 been prudently incurred. The pass-through tariffs that are
2 filed and approved pursuant to this Section shall not be
3 subject to review under, or in any way limited by, Section
4 16-111(i) of this Act. Beginning June 1, 2012, the costs
5 incurred by the electric utility to purchase renewable energy
6 credits in accordance with subsection (c) of Section 1-75 of
7 the Illinois Power Agency Act shall be recovered through the
8 electric utility's tariffed charges for delivery services
9 pursuant to Section 16-108 of this Act and shall not be
10 recovered through the electric utility's tariffed charges for
11 electric power and energy supply to its eligible retail
12 customers.

13 (m) The Commission has the authority to adopt rules to
14 carry out the provisions of this Section. For the public
15 interest, safety, and welfare, the Commission also has
16 authority to adopt rules to carry out the provisions of this
17 Section on an emergency basis immediately following the
18 effective date of this amendatory Act.

19 (n) Notwithstanding any other provision of this Act, any
20 affiliated electric utilities that submit a single procurement
21 plan covering their combined needs may procure for those
22 combined needs in conjunction with that plan, and may enter
23 jointly into power supply contracts, purchases, and other
24 procurement arrangements, and allocate capacity, energy
25 efficiency products, and energy and cost responsibility
26 therefor among themselves in proportion to their requirements.

1 (o) On or before June 1 of each year, the Commission shall
2 hold an informal hearing for the purpose of receiving comments
3 on the prior year's procurement process and any recommendations
4 for change.

5 (p) An electric utility subject to this Section may propose
6 to invest, lease, own, or operate an electric generation
7 facility as part of its procurement plan, provided the utility
8 demonstrates that such facility is the least-cost option to
9 provide electric service to eligible retail customers. If the
10 facility is shown to be the least-cost option and is included
11 in a procurement plan prepared in accordance with Section 1-75
12 of the Illinois Power Agency Act and this Section, then the
13 electric utility shall make a filing pursuant to Section 8-406
14 of the Act, and may request of the Commission any statutory
15 relief required thereunder. If the Commission grants all of the
16 necessary approvals for the proposed facility, such supply
17 shall thereafter be considered as a pre-existing contract under
18 subsection (b) of this Section. The Commission shall in any
19 order approving a proposal under this subsection specify how
20 the utility will recover the prudently incurred costs of
21 investing in, leasing, owning, or operating such generation
22 facility through just and reasonable rates charged to eligible
23 retail customers. Cost recovery for facilities included in the
24 utility's procurement plan pursuant to this subsection shall
25 not be subject to review under or in any way limited by the
26 provisions of Section 16-111(i) of this Act. Nothing in this

1 Section is intended to prohibit a utility from filing for a
2 fuel adjustment clause as is otherwise permitted under Section
3 9-220 of this Act.

4 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09.)

5 (220 ILCS 5/16-115)

6 Sec. 16-115. Certification of alternative retail electric
7 suppliers.

8 (a) Any alternative retail electric supplier must obtain a
9 certificate of service authority from the Commission in
10 accordance with this Section before serving any retail customer
11 or other user located in this State. An alternative retail
12 electric supplier may request, and the Commission may grant, a
13 certificate of service authority for the entire State or for a
14 specified geographic area of the State.

15 (b) An alternative retail electric supplier seeking a
16 certificate of service authority shall file with the Commission
17 a verified application containing information showing that the
18 applicant meets the requirements of this Section. The
19 alternative retail electric supplier shall publish notice of
20 its application in the official State newspaper within 10 days
21 following the date of its filing. No later than 45 days after
22 the application is properly filed with the Commission, and such
23 notice is published, the Commission shall issue its order
24 granting or denying the application.

25 (c) An application for a certificate of service authority

1 shall identify the area or areas in which the applicant intends
2 to offer service and the types of services it intends to offer.
3 Applicants that seek to serve residential or small commercial
4 retail customers within a geographic area that is smaller than
5 an electric utility's service area shall submit evidence
6 demonstrating that the designation of this smaller area does
7 not violate Section 16-115A. An applicant that seeks to serve
8 residential or small commercial retail customers may state in
9 its application for certification any limitations that will be
10 imposed on the number of customers or maximum load to be
11 served.

12 (d) The Commission shall grant the application for a
13 certificate of service authority if it makes the findings set
14 forth in this subsection based on the verified application and
15 such other information as the applicant may submit:

16 (1) That the applicant possesses sufficient technical,
17 financial and managerial resources and abilities to
18 provide the service for which it seeks a certificate of
19 service authority. In determining the level of technical,
20 financial and managerial resources and abilities which the
21 applicant must demonstrate, the Commission shall consider
22 (i) the characteristics, including the size and financial
23 sophistication, of the customers that the applicant seeks
24 to serve, and (ii) whether the applicant seeks to provide
25 electric power and energy using property, plant and
26 equipment which it owns, controls or operates;

1 (2) That the applicant will comply with all applicable
2 federal, State, regional and industry rules, policies,
3 practices and procedures for the use, operation, and
4 maintenance of the safety, integrity and reliability, of
5 the interconnected electric transmission system;

6 (3) That the applicant will only provide service to
7 retail customers in an electric utility's service area that
8 are eligible to take delivery services under this Act;

9 (4) That the applicant will comply with such
10 informational or reporting requirements as the Commission
11 may by rule establish and provide the information required
12 by Section 16-112. Any data related to contracts for the
13 purchase and sale of electric power and energy shall be
14 made available for review by the Staff of the Commission on
15 a confidential and proprietary basis and only to the extent
16 and for the purposes which the Commission determines are
17 reasonably necessary in order to carry out the purposes of
18 this Act;

19 (5) That the applicant will procure renewable energy
20 resources in accordance with Section 16-115D of this Act,
21 and will source electricity from clean coal facilities, as
22 defined in Section 1-10 of the Illinois Power Agency Act,
23 in amounts at least equal to the percentages set forth in
24 subsections (c) and (d) of Section 1-75 of the Illinois
25 Power Agency Act. For purposes of this Section:

26 (i) (blank) ~~(Blank)~~;

1 (ii) (blank) ~~(Blank)~~;

2 (iii) (blank); ~~the required sourcing of~~
3 ~~electricity generated by clean coal facilities, other~~
4 ~~than the initial clean coal facility, shall be limited~~
5 ~~to the amount of electricity that can be procured or~~
6 ~~sourced at a price at or below the benchmarks approved~~
7 ~~by the Commission each year in accordance with item (1)~~
8 ~~of subsection (c) and items (1) and (5) of subsection~~
9 ~~(d) of Section 1-75 of the Illinois Power Agency Act;~~

10 (iv) all alternative retail electric suppliers,
11 whether certified before or after the effective date of
12 this amendatory Act of the 97th General Assembly, shall
13 execute a sourcing agreement to source electricity
14 from the initial clean coal facility, on the terms set
15 forth in paragraphs (3) and (4) of subsection (d) of
16 Section 1-75 of the Illinois Power Agency Act, with
17 each reference therein to "utility" being deemed to be
18 a reference to an alternative retail electric
19 supplier, except that ~~in lieu~~ of the requirements in
20 subparagraphs (B) (v), (D) (ii), and (D) (vii) ~~(A) (v),~~
21 ~~(B) (i), (C) (v), and (C) (vi)~~ of paragraph (3) of that
22 subsection (d), shall not apply; ~~the applicant shall~~
23 ~~execute one or more of the following:~~

24 ~~(1) if the sourcing agreement is a power~~
25 ~~purchase agreement, a contract with the initial~~
26 ~~clean coal facility to purchase in each hour an~~

1 ~~amount of electricity equal to all clean coal~~
2 ~~energy made available from the initial clean coal~~
3 ~~facility during such hour, which the utilities are~~
4 ~~not required to procure under the terms of~~
5 ~~subsection (d) of Section 1-75 of the Illinois~~
6 ~~Power Agency Act, multiplied by a fraction, the~~
7 ~~numerator of which is the alternative retail~~
8 ~~electric supplier's retail market sales of~~
9 ~~electricity (expressed in kilowatthours sold) in~~
10 ~~the State during the prior calendar month and the~~
11 ~~denominator of which is the total sales of~~
12 ~~electricity (expressed in kilowatthours sold) in~~
13 ~~the State by alternative retail electric suppliers~~
14 ~~during such prior month that are subject to the~~
15 ~~requirements of this paragraph (5) of subsection~~
16 ~~(d) of this Section and subsection (d) of Section~~
17 ~~1-75 of the Illinois Power Agency Act plus the~~
18 ~~total sales of electricity (expressed in~~
19 ~~kilowatthours sold) by utilities outside of their~~
20 ~~service areas during such prior month, pursuant to~~
21 ~~subsection (c) of Section 16-116 of this Act; or~~

22 ~~(2) if the sourcing agreement is a contract for~~
23 ~~differences, a contract with the initial clean~~
24 ~~coal facility in each hour with respect to an~~
25 ~~amount of electricity equal to all clean coal~~
26 ~~energy made available from the initial clean coal~~

1 ~~facility during such hour, which the utilities are~~
2 ~~not required to procure under the terms of~~
3 ~~subsection (d) of Section 1-75 of the Illinois~~
4 ~~Power Agency Act, multiplied by a fraction, the~~
5 ~~numerator of which is the alternative retail~~
6 ~~electric supplier's retail market sales of~~
7 ~~electricity (expressed in kilowatthours sold) in~~
8 ~~the State during the prior calendar month and the~~
9 ~~denominator of which is the total sales of~~
10 ~~electricity (expressed in kilowatthours sold) in~~
11 ~~the State by alternative retail electric suppliers~~
12 ~~during such prior month that are subject to the~~
13 ~~requirements of this paragraph (5) of subsection~~
14 ~~(d) of this Section and subsection (d) of Section~~
15 ~~1-75 of the Illinois Power Agency Act plus the~~
16 ~~total sales of electricity (expressed in~~
17 ~~kilowatthours sold) by utilities outside of their~~
18 ~~service areas during such prior month, pursuant to~~
19 ~~subsection (c) of Section 16-116 of this Act;~~

20 (v) (blank); ~~if, in any year after the first year~~
21 ~~of commercial operation, the owner of the clean coal~~
22 ~~facility fails to demonstrate to the Commission that~~
23 ~~the initial clean coal facility captured and~~
24 ~~sequestered at least 50% of the total carbon emissions~~
25 ~~that the facility would otherwise emit or that~~
26 ~~sequestration of emissions from prior years has~~

1 ~~failed, resulting in the release of carbon into the~~
2 ~~atmosphere, the owner of the facility must offset~~
3 ~~excess emissions. Any such carbon offsets must be~~
4 ~~permanent, additional, verifiable, real, located~~
5 ~~within the State of Illinois, and legally and~~
6 ~~practicably enforceable. The costs of any such offsets~~
7 ~~that are not recoverable shall not exceed \$15 million~~
8 ~~in any given year. No costs of any such purchases of~~
9 ~~carbon offsets may be recovered from an alternative~~
10 ~~retail electric supplier or its customers. All carbon~~
11 ~~offsets purchased for this purpose and any carbon~~
12 ~~emission credits associated with sequestration of~~
13 ~~carbon from the facility must be permanently retired.~~
14 ~~The initial clean coal facility shall not forfeit its~~
15 ~~designation as a clean coal facility if the facility~~
16 ~~fails to fully comply with the applicable carbon~~
17 ~~sequestration requirements in any given year, provided~~
18 ~~the requisite offsets are purchased. However, the~~
19 ~~Attorney General, on behalf of the People of the State~~
20 ~~of Illinois, may specifically enforce the facility's~~
21 ~~sequestration requirement and the other terms of this~~
22 ~~contract provision. Compliance with the sequestration~~
23 ~~requirements and offset purchase requirements that~~
24 ~~apply to the initial clean coal facility shall be~~
25 ~~reviewed annually by an independent expert retained by~~
26 ~~the owner of the initial clean coal facility, with the~~

1 ~~advance written approval of the Attorney General;~~

2 (vi) ~~the~~ The Commission shall, after notice and
3 hearing, revoke the certification of any alternative
4 retail electric supplier that fails to execute a
5 sourcing agreement with the initial clean coal
6 facility as required by item (5) of subsection (d) of
7 this Section. The sourcing agreements with ~~the~~ this
8 initial clean coal facility shall be subject to
9 approval both approval of the initial clean coal
10 facility by the Illinois Power Agency pursuant to
11 paragraph (4) of subsection (d) of Section 1-75 of the
12 Illinois Power Agency Act ~~General Assembly and~~
13 satisfaction of the requirements of item (4) of
14 subsection (d) of Section 1-75 of the Illinois Power
15 Agency Act, and shall be executed within 90 days after
16 any such approval by the Illinois Power Agency or the
17 issuance of any necessary approval by the Federal
18 Energy Regulatory Commission, whichever is later;

19 (vii) The Commission shall have jurisdiction over
20 disciplinary proceedings and complaints for violations
21 of this Section. If, upon complaint, the Commission
22 determines an alternative retail electric supplier has
23 failed to execute a sourcing agreement with the initial
24 clean coal facility, then the Commission shall issue
25 notice of the finding to the alternative retail
26 electric supplier. The alternative retail electric

1 supplier shall have 30 days after the receipt of notice
2 to enter into a sourcing agreement. If, after the
3 notice period, the Commission finds an alternative
4 retail electric supplier has failed to comply, then the
5 Commission shall revoke the alternative retail
6 electric supplier's certificate for 6 months ~~General~~
7 ~~Assembly. The Commission shall not accept an~~
8 ~~application for certification from an alternative~~
9 ~~retail electric supplier that has lost certification~~
10 ~~under this subsection (d), or any corporate affiliate~~
11 ~~thereof, for at least one year from the date of~~
12 ~~revocation;~~

13 (6) With respect to an applicant that seeks to serve
14 residential or small commercial retail customers, that the
15 area to be served by the applicant and any limitations it
16 proposes on the number of customers or maximum amount of
17 load to be served meet the provisions of Section 16-115A,
18 provided, that the Commission can extend the time for
19 considering such a certificate request by up to 90 days,
20 and can schedule hearings on such a request;

21 (7) That the applicant meets the requirements of
22 subsection (a) of Section 16-128; and

23 (8) That the applicant will comply with all other
24 applicable laws and regulations.

25 (d-5) (Blank).

26 (e) A retail customer that owns a cogeneration or

1 self-generation facility and that seeks certification only to
2 provide electric power and energy from such facility to retail
3 customers at separate locations which customers are both (i)
4 owned by, or a subsidiary or other corporate affiliate of, such
5 applicant and (ii) eligible for delivery services, shall be
6 granted a certificate of service authority upon filing an
7 application and notifying the Commission that it has entered
8 into an agreement with the relevant electric utilities pursuant
9 to Section 16-118. Provided, however, that if the retail
10 customer owning such cogeneration or self-generation facility
11 would not be charged a transition charge due to the exemption
12 provided under subsection (f) of Section 16-108 prior to the
13 certification, and the retail customers at separate locations
14 are taking delivery services in conjunction with purchasing
15 power and energy from the facility, the retail customer on
16 whose premises the facility is located shall not thereafter be
17 required to pay transition charges on the power and energy that
18 such retail customer takes from the facility.

19 (f) The Commission shall have the authority to promulgate
20 rules and regulations to carry out the provisions of this
21 Section. On or before May 1, 1999, the Commission shall adopt a
22 rule or rules applicable to the certification of those
23 alternative retail electric suppliers that seek to serve only
24 nonresidential retail customers with maximum electrical
25 demands of one megawatt or more which shall provide for (i)
26 expedited and streamlined procedures for certification of such

1 alternative retail electric suppliers and (ii) specific
2 criteria which, if met by any such alternative retail electric
3 supplier, shall constitute the demonstration of technical,
4 financial and managerial resources and abilities to provide
5 service required by subsection (d) (1) of this Section, such as
6 a requirement to post a bond or letter of credit, from a
7 responsible surety or financial institution, of sufficient
8 size for the nature and scope of the services to be provided;
9 demonstration of adequate insurance for the scope and nature of
10 the services to be provided; and experience in providing
11 similar services in other jurisdictions.

12 (g) In any proceeding initiated by a public utility
13 pursuant to Section 8-406 or Section 8-406.1 of the this Act
14 for a certificate of public convenience and necessity to
15 construct and operate any utility plant, equipment, or facility
16 required to provide service to the initial clean coal facility,
17 it shall be conclusively presumed that the public convenience
18 and necessary require the construction of such utility plant,
19 equipment, or facility. In any proceeding initiated by a public
20 utility pursuant to Section 8-503 of this Act for an order
21 directing the addition, extension, or improvement of any
22 utility plant, equipment, facilities, or other property or the
23 erection of any new utility plant, or equipment or facilities
24 to provide service to the initial clean coal facility, it shall
25 be conclusively presumed that such additional, extended,
26 improved or new utility plant, equipment, facility, or other

1 property is necessary and should be added, extended, or
2 erected.

3 (Source: P.A. 95-130, eff. 1-1-08; 95-1027, eff. 6-1-09;
4 96-159, eff. 8-10-09.)

5 (220 ILCS 5/16-115D)

6 Sec. 16-115D. Renewable portfolio standard for alternative
7 retail electric suppliers and electric utilities operating
8 outside their service territories.

9 (a) Until May 31, 2012, an ~~An~~ alternative retail electric
10 supplier shall be responsible for procuring cost-effective
11 renewable energy resources as required under item (5) of
12 subsection (d) of Section 16-115 of this Act as outlined
13 herein:

14 (1) The definition of renewable energy resources
15 contained in Section 1-10 of the Illinois Power Agency Act
16 applies to all renewable energy resources required to be
17 procured by alternative retail electric suppliers.

18 (2) The quantity of renewable energy resources shall be
19 measured as a percentage of the actual amount of metered
20 electricity (megawatt-hours) delivered by the alternative
21 retail electric supplier to Illinois retail customers
22 during the 12-month period June 1 through May 31,
23 commencing June 1, 2009, and the comparable 12-month period
24 in each year thereafter except as provided in item (6) of
25 this subsection (a).

1 (3) The quantity of renewable energy resources shall be
2 in amounts at least equal to the annual percentages set
3 forth in item (1) of subsection (c) of Section 1-75 of the
4 Illinois Power Agency Act. At least 60% of the renewable
5 energy resources procured pursuant to items (1) through (3)
6 of subsection (b) of this Section shall come from wind
7 generation and, starting June 1, 2015, at least 6% of the
8 renewable energy resources procured pursuant to items (1)
9 through (3) of subsection (b) of this Section shall come
10 from solar photovoltaics. If, in any given year, an
11 alternative retail electric supplier does not purchase at
12 least these levels of renewable energy resources, then the
13 alternative retail electric supplier shall make
14 alternative compliance payments, as described in
15 subsection (d) of this Section.

16 (4) The quantity and source of renewable energy
17 resources shall be independently verified through the PJM
18 Environmental Information System Generation Attribute
19 Tracking System (PJM-GATS) or the Midwest Renewable Energy
20 Tracking System (M-RETS), which shall document the
21 location of generation, resource type, month, and year of
22 generation for all qualifying renewable energy resources
23 that an alternative retail electric supplier uses to comply
24 with this Section. No later than June 1, 2009, the Illinois
25 Power Agency shall provide PJM-GATS, M-RETS, and
26 alternative retail electric suppliers with all information

1 necessary to identify resources located in Illinois,
2 within states that adjoin Illinois or within portions of
3 the PJM and MISO footprint in the United States that
4 qualify under the definition of renewable energy resources
5 in Section 1-10 of the Illinois Power Agency Act for
6 compliance with this Section 16-115D. Alternative retail
7 electric suppliers shall not be subject to the requirements
8 in item (3) of subsection (c) of Section 1-75 of the
9 Illinois Power Agency Act.

10 (5) All renewable energy credits used to comply with
11 this Section shall be permanently retired.

12 (6) The required procurement of renewable energy
13 resources by an alternative retail electric supplier shall
14 apply to all metered electricity delivered to Illinois
15 retail customers by the alternative retail electric
16 supplier pursuant to contracts executed or extended after
17 March 15, 2009.

18 (b) Until May 31, 2012, an ~~An~~ alternative retail electric
19 supplier shall comply with the renewable energy portfolio
20 standards by making an alternative compliance payment, as
21 described in subsection (d) of this Section, to cover at least
22 one-half of the alternative retail electric supplier's
23 compliance obligation and any one or combination of the
24 following means to cover the remainder of the alternative
25 retail electric supplier's compliance obligation:

26 (1) Generating electricity using renewable energy

1 resources identified pursuant to item (4) of subsection (a)
2 of this Section.

3 (2) Purchasing electricity generated using renewable
4 energy resources identified pursuant to item (4) of
5 subsection (a) of this Section through an energy contract.

6 (3) Purchasing renewable energy credits from renewable
7 energy resources identified pursuant to item (4) of
8 subsection (a) of this Section.

9 (4) Making an alternative compliance payment as
10 described in subsection (d) of this Section.

11 (c) Use of renewable energy credits.

12 (1) Renewable energy credits that are not used by an
13 alternative retail electric supplier to comply with a
14 renewable portfolio standard in a compliance year may be
15 banked and carried forward up to 2 12-month compliance
16 periods after the compliance period in which the credit was
17 generated for the purpose of complying with a renewable
18 portfolio standard in those 2 subsequent compliance
19 periods. For the 2009-2010 and 2010-2011 compliance
20 periods, an alternative retail electric supplier may use
21 renewable credits generated after December 31, 2008 and
22 before June 1, 2009 to comply with this Section.

23 (2) An alternative retail electric supplier is
24 responsible for demonstrating that a renewable energy
25 credit used to comply with a renewable portfolio standard
26 is derived from a renewable energy resource and that the

1 alternative retail electric supplier has not used, traded,
2 sold, or otherwise transferred the credit.

3 (3) The same renewable energy credit may be used by an
4 alternative retail electric supplier to comply with a
5 federal renewable portfolio standard and a renewable
6 portfolio standard established under this Act. An
7 alternative retail electric supplier that uses a renewable
8 energy credit to comply with a renewable portfolio standard
9 imposed by any other state may not use the same credit to
10 comply with a renewable portfolio standard established
11 under this Act.

12 (d) Alternative compliance payments.

13 (1) The Commission shall establish and post on its
14 website, within 5 business days after entering an order
15 approving a procurement plan pursuant to Section 1-75 of
16 the Illinois Power Agency Act, maximum alternative
17 compliance payment rates, expressed on a per kilowatt-hour
18 basis, that will be applicable in the first compliance
19 period following the plan approval. A separate maximum
20 alternative compliance payment rate shall be established
21 for the service territory of each electric utility that is
22 subject to subsection (c) of Section 1-75 of the Illinois
23 Power Agency Act. Each maximum alternative compliance
24 payment rate shall be equal to the maximum allowable annual
25 estimated average net increase due to the costs of the
26 utility's purchase of renewable energy resources included

1 in the amounts paid by eligible retail customers in
2 connection with electric service, as described in item (2)
3 of subsection (c) of Section 1-75 of the Illinois Power
4 Agency Act for the compliance period, and as established in
5 the approved procurement plan. Following each procurement
6 event through which renewable energy resources are
7 purchased for one or more of these utilities for the
8 compliance period, the Commission shall establish and post
9 on its website estimates of the alternative compliance
10 payment rates, expressed on a per kilowatt-hour basis, that
11 shall apply for that compliance period. Posting of the
12 estimates shall occur no later than 10 business days
13 following the procurement event, however, the Commission
14 shall not be required to establish and post such estimates
15 more often than once per calendar month. By July 1 of each
16 year, the Commission shall establish and post on its
17 website the actual alternative compliance payment rates
18 for the preceding compliance year. For compliance years
19 beginning prior to June 1, 2014, each alternative
20 compliance payment rate shall be equal to the total amount
21 of dollars that the utility contracted to spend on
22 renewable resources, excepting the additional incremental
23 cost attributable to solar resources, for the compliance
24 period divided by the forecasted load of eligible retail
25 customers, at the customers' meters, as previously
26 established in the Commission-approved procurement plan

1 for that compliance year. For compliance years commencing
2 on or after June 1, 2014, each alternative compliance
3 payment rate shall be equal to the total amount of dollars
4 that the utility contracted to spend on all renewable
5 resources for the compliance period divided by the
6 forecasted load of eligible retail customers, at the
7 customers' meters, as previously established in the
8 Commission-approved procurement plan for that compliance
9 year. The actual alternative compliance payment rates may
10 not exceed the maximum alternative compliance payment
11 rates established for the compliance period. For purposes
12 of this subsection (d), the term "eligible retail
13 customers" has the same meaning as found in Section
14 16-111.5 of this Act.

15 (2) In any given compliance year, an alternative retail
16 electric supplier may elect to use alternative compliance
17 payments to comply with all or a part of the applicable
18 renewable portfolio standard. In the event that an
19 alternative retail electric supplier elects to make
20 alternative compliance payments to comply with all or a
21 part of the applicable renewable portfolio standard, such
22 payments shall be made by September 1, 2010 for the period
23 of June 1, 2009 to May 1, 2010 and by September 1 of each
24 year thereafter for the subsequent compliance period, in
25 the manner and form as determined by the Commission. Any
26 election by an alternative retail electric supplier to use

1 alternative compliance payments is subject to review by the
2 Commission under subsection (e) of this Section.

3 (3) An alternative retail electric supplier's
4 alternative compliance payments shall be computed
5 separately for each electric utility's service territory
6 within which the alternative retail electric supplier
7 provided retail service during the compliance period,
8 provided that the electric utility was subject to
9 subsection (c) of Section 1-75 of the Illinois Power Agency
10 Act. For each service territory, the alternative retail
11 electric supplier's alternative compliance payment shall
12 be equal to (i) the actual alternative compliance payment
13 rate established in item (1) of this subsection (d),
14 multiplied by (ii) the actual amount of metered electricity
15 delivered by the alternative retail electric supplier to
16 retail customers within the service territory during the
17 compliance period, multiplied by (iii) the result of one
18 minus the ratios of the quantity of renewable energy
19 resources used by the alternative retail electric supplier
20 to comply with the requirements of this Section within the
21 service territory to the product of the percentage of
22 renewable energy resources required under item (3) of
23 subsection (a) of this Section and the actual amount of
24 metered electricity delivered by the alternative retail
25 electric supplier to retail customers within the service
26 territory during the compliance period.

1 (4) All alternative compliance payments by alternative
2 retail electric suppliers shall be deposited in the
3 Illinois Power Agency Renewable Energy Resources Fund and
4 used to purchase renewable energy credits, in accordance
5 with Section 1-56 of the Illinois Power Agency Act.

6 (5) The Commission, in consultation with the Illinois
7 Power Agency, shall establish a process or proceeding to
8 consider the impact of a federal renewable portfolio
9 standard, if enacted, on the operation of the alternative
10 compliance mechanism, which shall include, but not be
11 limited to, developing, to the extent permitted by the
12 applicable federal statute, an appropriate methodology to
13 apportion renewable energy credits retired as a result of
14 alternative compliance payments made in accordance with
15 this Section. The Commission shall commence any such
16 process or proceeding within 35 days after enactment of a
17 federal renewable portfolio standard.

18 (e) Each alternative retail electric supplier shall, by
19 September 1, 2010 and by September 1 of each year thereafter,
20 prepare and submit to the Commission a report, in a format to
21 be specified by the Commission on or before December 31, 2009,
22 that provides information certifying compliance by the
23 alternative retail electric supplier with this Section,
24 including copies of all PJM-GATS and M-RETS reports, and
25 documentation relating to banking, retiring renewable energy
26 credits, and any other information that the Commission

1 determines necessary to ensure compliance with this Section. An
2 alternative retail electric supplier may file commercially or
3 financially sensitive information or trade secrets with the
4 Commission as provided under the rules of the Commission. To be
5 filed confidentially, the information shall be accompanied by
6 an affidavit that sets forth both the reasons for the
7 confidentiality and a public synopsis of the information.

8 (f) The Commission may initiate a contested case to review
9 allegations that the alternative retail electric supplier has
10 violated this Section, including an order issued or rule
11 promulgated under this Section. In any such proceeding, the
12 alternative retail electric supplier shall have the burden of
13 proof. If the Commission finds, after notice and hearing, that
14 an alternative retail electric supplier has violated this
15 Section, then the Commission shall issue an order requiring the
16 alternative retail electric supplier to:

17 (1) immediately comply with this Section; and

18 (2) if the violation involves a failure to procure the
19 requisite quantity of renewable energy resources or pay the
20 applicable alternative compliance payment by the annual
21 deadline, the Commission shall require the alternative
22 retail electric supplier to double the applicable
23 alternative compliance payment that would otherwise be
24 required to bring the alternative retail electric supplier
25 into compliance with this Section.

26 If an alternative retail electric supplier fails to comply

1 with the renewable energy resource portfolio requirement in
2 this Section more than once in a 5-year period, then the
3 Commission shall revoke the alternative electric supplier's
4 certificate of service authority. The Commission shall not
5 accept an application for a certificate of service authority
6 from an alternative retail electric supplier that has lost
7 certification under this subsection (f), or any corporate
8 affiliate thereof, for at least one year after the date of
9 revocation.

10 (g) All of the provisions of this Section apply to electric
11 utilities operating outside their service area except under
12 item (2) of subsection (a) of this Section the quantity of
13 renewable energy resources shall be measured as a percentage of
14 the actual amount of electricity (megawatt-hours) supplied in
15 the State outside of the utility's service territory during the
16 12-month period June 1 through May 31, commencing June 1, 2009,
17 and the comparable 12-month period in each year thereafter
18 except as provided in item (6) of subsection (a) of this
19 Section.

20 If any such utility fails to procure the requisite quantity
21 of renewable energy resources by the annual deadline, then the
22 Commission shall require the utility to double the alternative
23 compliance payment that would otherwise be required to bring
24 the utility into compliance with this Section.

25 If any such utility fails to comply with the renewable
26 energy resource portfolio requirement in this Section more than

1 once in a 5-year period, then the Commission shall order the
2 utility to cease all sales outside of the utility's service
3 territory for a period of at least one year.

4 (h) The provisions of this Section and the provisions of
5 subsection (d) of Section 16-115 of this Act relating to
6 procurement of renewable energy resources shall not apply to an
7 alternative retail electric supplier that operates a combined
8 heat and power system in this State or that has a corporate
9 affiliate that operates such a combined heat and power system
10 in this State that supplies electricity primarily to or for the
11 benefit of: (i) facilities owned by the supplier, its
12 subsidiary, or other corporate affiliate; (ii) facilities
13 electrically integrated with the electrical system of
14 facilities owned by the supplier, its subsidiary, or other
15 corporate affiliate; or (iii) facilities that are adjacent to
16 the site on which the combined heat and power system is
17 located.

18 (i) The obligations specified in this Section of
19 alternative electric suppliers and electric utilities
20 operating outside their service territories to procure
21 renewable energy resources, make alternative compliance
22 payments, and file annual reports, and the obligations of the
23 Commission to determine and post alternative compliance
24 payment rates, shall terminate effective May 31, 2012, provided
25 that alternative electric suppliers and electric utilities
26 operating outside their service territories shall be obligated

1 to make all alternative compliance payments that they were
2 obligated to pay for periods through and including May 31,
3 2012, but were not paid as of that date and to file all
4 required reports for periods prior to June 1, 2012. The
5 Commission shall continue to enforce the payment of unpaid
6 alternative compliance payments after May 31, 2012 in
7 accordance with subsections (f) and (g) of this Section. All
8 alternative compliance payments made after May 31, 2012 shall
9 be deposited in the Illinois Power Agency Renewable Energy
10 Resources Fund and used to purchase renewable energy credits,
11 in accordance with Section 1-56 of the Illinois Power Agency
12 Act.

13 (Source: P.A. 96-33, eff. 7-10-09; 96-159, eff. 8-10-09;
14 96-1437, eff. 8-17-10.)

15 (220 ILCS 5/16-116)

16 Sec. 16-116. Commission oversight of electric utilities
17 serving retail customers outside their service areas or
18 providing competitive, non-tariffed services.

19 (a) An electric utility that has a tariff on file for
20 delivery services may, without regard to any otherwise
21 applicable tariffs on file, provide electric power and energy
22 to one or more retail customers located outside its service
23 area, but only to the extent (i) such retail customer (A) is
24 eligible for delivery services under any delivery services
25 tariff filed with the Commission by the electric utility in

1 whose service area the retail customer is located and (B) has
2 either elected to take such delivery services or has paid or
3 contracted to pay the charges specified in Sections 16-108 and
4 16-114, or (ii) if such retail customer is served by a
5 municipal system or electric cooperative, the customer is
6 eligible for delivery services under the terms and conditions
7 for such service established by the municipal system or
8 electric cooperative serving that customer.

9 (b) An electric utility may offer any competitive service
10 to any customer or group of customers without filing contracts
11 with or seeking approval of the Commission, notwithstanding any
12 rule or regulation that would require such approval. The
13 Commission shall not increase or decrease the prices, and may
14 not alter or add to the terms and conditions for the utility's
15 competitive services, from those agreed to by the electric
16 utility and the customer or customers. Non-tariffed,
17 competitive services shall not be subject to the provisions of
18 the Electric Supplier Act or to Articles V, VII, VIII or IX of
19 the Act, except to the extent that any provisions of such
20 Articles are made applicable to alternative retail electric
21 suppliers pursuant to Sections 16-115 and 16-115A, but shall be
22 subject to the provisions of subsections (b) through (g) of
23 Section 16-115A, and Section 16-115B to the same extent such
24 provisions are applicable to the services provided by
25 alternative retail electric suppliers.

26 (c) Electric utilities serving retail customers outside

1 their service areas shall be subject to the requirements of
2 paragraph (5) of subsection (d) of Section 16-115 of the Public
3 Utilities Act, ~~except that the numerators referred to in that~~
4 ~~subsection (d) shall be the utility's retail market sales of~~
5 ~~electricity (expressed in kilowatthours sold) in the State~~
6 ~~outside of the utility's service territory in the prior month.~~
7 (Source: P.A. 95-1027, eff. 6-1-09.)

8 Section 900. Severability. The provisions of this Act are
9 severable under Section 1.31 of the Statute on Statutes.

10 Section 999. Effective date. This Act takes effect upon
11 becoming law.".